Risk Factors Comparison 2024-03-13 to 2023-04-13 Form: 10-K

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Certain factors may have a material adverse effect on our business, financial condition, results of operations, and prospects. You should carefully consider the risks and uncertainties described below, as well as the other information in this Annual Report, including our consolidated financial statements and the related notes and " Management' s Discussion and Analysis of Financial Condition and Results of Operations. " The occurrence of any of the events or developments described below, or of additional risks and uncertainties not presently known to us or that we currently deem immaterial, could materially and adversely affect our business, results of operations, financial condition, and prospects. In such an event, the market price of our securities could decline, and you could lose all or part of your investment. Risk Factor Summary Below is a summary of the principal factors that make an investment in our common stock speculative or subject to risk. This summary does not address all of the risks facing our business. You should consider the risks in this summary together with the detailed discussion of risks that immediately follows this summary in this section titled " Risk Factors, " as well as the other information in this Annual Report on Form 10- K. • Our limited operating history and our rapidly evolving industry make it difficult to evaluate our business, the risks and challenges we may face, and future prospects. • The engineering of our systems is in continuous refinement to improve system cost and efficiency. There is no guarantee that we will be successful in implementing all improvements under the expected schedule. • Our GESSs are based on established principles that are deployed in a novel way to create new technologies to store energy and potential customers may be hesitant to make a significant investment in our technology or abandon the technology they are currently using. • Our systems' performance may not meet our customers' expectations or needs. • There is no assurance that non- binding letters of intent and other indications of interest, including awards, submitted proposals or short- lists, will result in binding orders or sales. Customers may cancel or delay the non- binding letters of intent and other indications of interest in our sales pipeline. As a result, our operating results and cash flows may be materially lower than our expected results of operations. • The failure or inability of our suppliers to deliver necessary components or raw materials for construction of our energy storage systems and their failure or inability to deliver them in a timely manner **or to the quality standards required,** could cause installation delays, cancellations, penalty payments and damage to our reputation. • Our business is subject to risks associated with construction, cost overruns and delays, including those related to obtaining government permits and approvals, electrical interconnection, and other contingencies that may arise in the course of completing installations. • **Material weaknesses in** ~~During an evaluation of the effectiveness of~~ our internal control over financial reporting **could have** ~~as of December 31, 2022, management identified~~ a **significant adverse** ~~material weakness in our internal control over financial reporting. If we continue to fail to maintain proper and effective~~ --- **effect on** ~~internal controls over financial reporting or~~ **our business** ~~are unable to remediate the material weakness in our internal control over financial reporting, our ability to produce accurate~~ and **the price** ~~timely financial statements could be impaired, and investors' views~~ of **our common stock** ~~us could be harmed~~ . • We are an early **-** stage company with a history of losses, and expect to incur significant expenses and continuing losses for the foreseeable future, and we may not be able to achieve profitability in the future. • Our total backlog and bookings may not be indicative of our future revenue, which could have a material adverse impact on our business, financial condition, and results of operations. • Our energy storage systems involve a lengthy sales and installation cycle, and if we fail to close sales on a regular and timely basis it could harm our business. Moreover, the long sales cycles for our energy storage systems may cause us to incur significant expenses without offsetting revenues. • Our systems include complex software and technology systems and do not have a meaningful history of operation, and there can be no assurance such systems and technology will perform as expected or that software, engineering or other technical defects will not be discovered until after a system is installed and operated by a customer. If our energy storage systems contain manufacturing or construction defects, our business and financial results could be harmed. In addition, the development and updating of these systems will require us to incur potentially significant costs and expenses. • If any of our products are or are alleged to be defective in design or manufacturing or experience other failures, we may be compelled to undertake corrective actions, which could adversely affect our business, prospects, operating results, reputation and financial condition. **• If we fail to protect, defend, maintain, or enforce intellectual property rights on which our business depends, including against existing or future competitors, our growth and success may be adversely affected. • Third parties may assert that we are infringing upon their intellectual property rights, which could divert management' s attention, cause us to incur significant costs, and prevent us from selling or using the technology to which such rights relate.** Risks Related to Our Business and Our Industry Our limited operating history and our rapidly evolving industry make it difficult to evaluate our business, the risks and challenges we may face and future prospects. **Prior to** ~~From our inception in October 2017 through~~ the first half of 2022, we focused principally on developing and proving our fundamental gravity energy storage technology, including our ~~GESS~~ **GESSs** , which we are seeking to further refine and commercialize. Beginning in 2022, we expanded our offerings to include BESSs and ~~gHESSs~~ - **HESSs** . ~~We~~ **To date, we** have **only** built ~~only~~ **two BESSs and** one GESS ~~to date~~ , **which was** the EV1 Tower in Lugano, Switzerland (the " **EV1** CDU "), which served as a commercial demonstration unit until its decommissioning in September 2022 ~~. We have not fully deployed any other systems as of the date of this Annual Report, although we have signed contracts to deliver BESSs and to own and operate through a tolling arrangement a green hydrogen plus battery energy storage system (further described in " Recent Developments " within Management' s Discussion and Analysis section)~~ . As a result, we have a limited history operating our business and constructing energy storage systems, and therefore a limited history upon which you can base an investment decision. Our future growth in a nascent and rapidly- evolving industry is dependent on a number of factors, including rising demand for clean electric power solutions that can provide electric power with lower carbon emissions and replacement of conventional generation sources and the adoption speed of digital software applications to modernize the efficiency of power assets and the electric grid. Among other renewable energy market trends, we expect our business results to be driven by declines in the cost of generation of renewable power, decreases in the cost of manufacturing battery modules and cells, customer needs for services and digital applications, commercial, legal, regulatory, and political pressure for the reduced use of and reliance on fossil fuels and electric power generation that relies on fossil or other non- renewable fuels, and a rapidly growing energy storage market driven by increasing demand from utilities, independent power producers, and large energy users. However, predicting future revenues and appropriately forecasting and budgeting for our expenses is difficult, and we have limited operating history to predict trends that may emerge and take hold and materially affect our business. ~~In particular, global inflationary pressures in the last year have disrupted the historical trend of declining renewable energy costs and declining battery costs, and it is unclear when, or if, our market segment will return to the historical trend of declining costs.~~ Our future operations and strategy is therefore subject to all of the risks inherent in light of the expenses, difficulties, complications and delays frequently encountered in connection with the growth of any new business in a nascent industry, as well as those that are specific to our business in particular. ~~We have experienced rapid internal growth and expect to invest in our growth for the foreseeable future. If we fail to manage our growth effectively, our business and operating results may suffer. In recent periods, our internal operations have grown in terms of complexity and the number of our employees, and we intend to continue such investment for the foreseeable future. The growth and expansion of our business has placed and continues to place a strain on management, operations, financial infrastructure, and corporate culture. In the event of further growth, our information technology systems and our internal control over financial reporting and procedures may not be adequate to support our operations and may introduce opportunities for data security incidents that may interrupt business operations and permit bad actors to obtain unauthorized access to business information or misappropriate funds. We may also face risks to the extent such bad actors infiltrate the information technology infrastructure of our contractors. To manage growth in operations and personnel, we will need to continue to improve our operational, financial and management controls and reporting systems and procedures. Failure to manage growth effectively could result in difficulty or delays in attracting customers, declines in quality or customer satisfaction, increases in costs, difficulties in introducing new products and services or enhancing existing products and services, loss of customers, information security vulnerabilities or other operational difficulties, any of which could adversely affect our business and results of operations.~~ Our projections are subject to significant risks, assumptions, estimates and uncertainties. As a result, our projected revenues, market share, expenses and profitability may differ materially from our expectations. Our projections are subject to significant risks, assumptions, estimates and uncertainties. Such projections reflect our current views with respect to future events or our future financial performance, are based on assumptions, and involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by our projections. We may not actually achieve the plans, expectations or objectives contained in our projections, and the underlying assumptions may prove incorrect. Such deviations may be due to factors outside our control or currently unknown to us. For example, our actual revenues, market share, timing for achieving business milestones, expenses and profitability may differ materially from our expectations. Therefore, undue reliance should not be placed on any of our projections. Our business model depends on acceptance of our technology by our customers, retaining existing customers, and the success of our business model. As a recent market entrant in a developing industry, our results of operations and financial condition are dependent upon our success in establishing or entering new markets, developing and commercializing our energy storage systems, and undertaking marketing activities. We face significant risks associated with our business strategy of targeting utilities, independent power producers, and large energy users and deploying our energy storage ~~system~~ systems at a scale that leads to broad market acceptance and profitability. ~~Furthermore, during 2022, we expanded our offering to include not only GESSs, but also BESSs and gHESS offerings.~~ The relative success of ~~these~~ **our energy** systems will be dependent upon a number of factors, including their ability to provide our customers with reliable and dependable energy storage for the durations that they require, while still being cost- effective **, and our ability to effectively manage any customer concerns. In addition to the development and acceptance of our core energy storage technologies, we anticipate further developing and marketing our digital platform for the management and optimization of energy storage systems. If this platform is not adopted by users of our energy storage products or on a standalone basis, we may not recoup our investment in its development and our results of operation may be negatively impacted** . We depend on a limited number of customers for the majority of our revenue, and the loss of any one of these customers could substantially reduce our revenue and impact our liquidity. The loss of any significant customers or partners or reduction in our business activities could cause our revenues to decrease significantly and increase our losses from operations. If our products are not successful and we cannot broaden our customer base, we will continue to depend on a few customers for the majority of our revenues. Additionally, if we are unable to negotiate favorable business terms with these customers in the future, our revenues and gross profits may be insufficient to allow us to achieve and / or sustain profitability, continue operations, or remain a going concern. Our business depends on our ability to succeed in implementing our energy storage systems and introduce innovative and competitive energy storage technologies. As ~~of the date of this Annual Report, we have not deployed a fully operational energy storage system. As~~ our energy storage systems are highly complex, this process is costly and time- consuming. Any future full energy storage deployments may incur more costs than we expect. Our business, reputation, results of operations and financial condition may be materially adversely affected if we do not successfully implement our systems or to the extent that such implementation occurs later or costs more than we expect **, or if innovations by our competitors achieve broader or earlier market acceptance** . Examples of costs that we cannot control include the costs of electronics due to global allocation shortages or costs associated with construction delays. If we are not able to reduce our cost structure in the future, our ability to become profitable may be impaired. Over time, we must effectively manage the ~~manufacturing~~ **equipment and construction** costs ~~for~~ **of** our energy storage systems to expand our market. While we have sought, and will continue to seek, to manage our ~~manufacturing and services~~ costs, the cost of components and raw materials, for example, could increase in the future. Any such increases could slow our growth and cause our financial results and operational metrics to suffer. In addition, we may face increases in our other expenses, including increases in wages or other labor costs, as well as installation, marketing, sales or related costs. We may continue to make significant investments to drive growth in the future. To the extent that the price of electricity from the grid is low in certain markets, we will need to continue to reduce our costs to maintain our expected margins in those markets. Increases in any of these costs or our failure to achieve projected cost reductions could adversely affect our results of operations and financial condition and harm our business and prospects. If we are unable to reduce our cost structure sufficiently in the future, we may not be able to achieve profitability, which could have a material adverse effect on our business and prospects. Operational costs can be difficult to predict and may include costs from requirements related to the decommissioning of our systems. We rely heavily on complex machinery for our operations and our production involves a significant degree of uncertainty and risk in terms of operational performance and costs. When fully operational, our energy storage systems will consist of large- scale machinery comprised of many components assembled on- site for our customers. The components of our energy storage systems are likely to suffer unexpected malfunctions from time to time and will depend on repairs and spare parts to resume operations, which may not be available when needed. Unexpected malfunctions of our energy storage systems or their constituent components may significantly affect the intended operational efficiency and performance. In addition, our energy storage systems may need to be decommissioned from time to time, and the related costs could be significant given the ~~expected~~ size and complexity of our energy storage systems. Operational performance and costs, including those related to project stoppage, can be difficult to predict and are often influenced by factors outside of our control, such as, but not limited to, scarcity of natural resources, environmental hazards and remediation, costs associated with construction, commissioning, testing or decommissioning of machines, labor disputes and strikes, difficulty or delays in obtaining governmental permits, damages or defects in electronic systems, industrial accidents, fire, seismic activity and natural disasters. Should operational risks materialize, it may result in the personal injury to or death of workers, the loss of production equipment, damage to ~~manufacturing~~ **demonstration** facilities, monetary losses, delays and unanticipated fluctuations in production, environmental damage, administrative fines, increased insurance costs and potential legal liabilities, all which could have a material adverse effect on our business, results of operations, cash flows, financial condition or prospects **. Furthermore, in recent periods, our internal operations have grown in complexity. We may in the future continue to grow our operations, both in terms of complexity and headcount. Any continued growth could increase our operational costs and failure to manage such growth could lead to additional costs in the future** . Our energy storage systems have significant upfront costs, and our customers may need to obtain financing to help finance purchases. If our customers are unable to procure third- party financing or if the cost of such financing exceeds our estimates, our business would be adversely affected. Our energy storage systems have significant upfront costs, and certain customers may need, or may prefer to acquire, third- party financing to purchase our systems. Therefore, our growth, including the deployment of our energy storage systems, may to an extent depend on our customers' ability to attract third- party financing partners. Their ability to obtain third- party financing depends on many factors that are outside of our control, including the ability of third parties to utilize tax credits and other government incentives, interest rate and / or currency exchange fluctuations, their perceived creditworthiness and the condition of credit markets generally. We expect that the financing of customer purchases of our energy storage systems will be subject to customary conditions such as the customer' s credit quality, and if these conditions are not satisfied, such customers may be unable to finance purchases of our energy storage systems, which would have an adverse effect on our revenue in a particular period. To the extent our customers are unable to arrange future financings for any of our current or potential projects, our business would be negatively impacted. In attempting to attract new customers to support our growth, we intend to refine our customer agreements based on experience. Moreover, new types of product offerings may require our customers to find partners willing to finance these new projects, which may have different terms and financing conditions from prior transactions. If the terms of these transactions or the structure of these projects fails to attract financiers, we may not be able to proceed with growing our business and our potential for growth may be limited. Additionally, financing options are also limited by the customer' s willingness to commit to making fixed payments regardless of the performance of the energy storage systems or our performance of our obligations under the customer agreement Further, our sales process for transactions that require financing require that we and our customers make certain assumptions regarding the cost of financing capital. If the cost of financing ultimately exceeds our estimates, we may be unable to proceed with some or all of the impacted projects or our revenue from such projects may be less than our estimates. Actual financing costs for potential customers may vary from our estimates due to factors outside of our control, including changes in customer creditworthiness, macroeconomic factors, the returns offered by other investment opportunities available to our financing partners, and other factors. If our customers are unable to procure financing partners willing to finance deployments of our products or if the cost of such financing exceeds our estimates, our business would be negatively impacted. The economic benefit of our energy storage systems to our customers depends on the cost of electricity available from alternative sources, including local electric utility companies, which cost structure is subject to change. The economic benefit of our energy storage systems to our customers includes, among other things, the benefit of reducing such customer' s payments to the local electric utility company. The rates at which electricity is available from a customer' s local electric utility company is subject to change and any changes in such rates may affect the relative benefits of our energy storage systems. Further, the local electric utility may impose " departing load, " " standby " or other charges on our customers in connection with their acquisition of our energy storage systems, the amounts of which are outside of our control and which may have a material impact on the economic benefit of our energy storage systems to our customers. Changes in the rates offered by local electric utilities and / or in the applicability or amounts of charges and other fees imposed by such utilities on customers acquiring our energy storage systems could adversely affect the demand for our energy storage systems.

Additionally, the electricity stored and released by our systems may not currently be cost- competitive in some geographic markets, and we may be unable to reduce our costs to a level at which our energy storage systems would be competitive in such markets. As such, unless the cost of electricity in these markets rises or we are able to generate demand for our energy storage systems based on benefits other than electricity cost savings, our potential for growth may be limited. The design of our GESSs are based...... systems from another energy storage technology. Our energy storage systems' performance may not meet our customers' expectations or needs. Our energy storage systems will be subject to various operating risks that may cause them to generate less value for our customers than expected. These risks include a failure or wearing out of our equipment or the equipment that our equipment connects into, an inability to find suitable replacement equipment or parts, or disruption in our distribution systems. Any extended interruption or failure of our customer' s projects, including systems we operate under long term service agreements, for any reason to generate the expected amount of output could adversely affect our business, financial condition and results of operations. In addition, our customers' willingness to acquire additional systems or services from us may be impacted in the future if any of our systems incur operational issues that indicate expected future cash flows from the system are less than the carrying value. Any such outcome could adversely affect our operating results or ability to attract new customers. If our estimates of the useful life for our energy storage systems are inaccurate or we do not meet service and warranties and performance guarantees, our business and financial results could be adversely affected. We ~~expect to~~ provide **limited** warranties and performance guarantees ~~of~~ **for** our **energy** systems. To date, we have ~~only~~ deployed **two** ~~our CDU, and we have not deployed any fully~~ operational **BESSs** ~~energy storage systems,~~ and our estimates about product performance and life may prove to be incorrect. Failure to meet these warranties and performance guarantee levels may require the purchase price to be adjusted downward based on agreed- upon performance targets, or require us to make cash payments to the customer based on actual performance, as compared to expected performance ~~. Through Energy Vault Solutions, we intend to continue exploring, the potential for offering, as a standalone product, a digital platform that helps energy storage businesses make decisions on optimizing their systems bidding and dispatch. We are in the developmental phase of such a digital platform, and there is no assurance that a market for such a digital platform exits or that it would be as beneficial to our customers as we expect. Through Energy Vault Solutions, we are in the development stage of exploring the potential for offering as a standalone product, a digital platform that could help energy storage businesses optimize their systems bidding and dispatch. We have begun developing this platform and we intend to continue this exploration. Even after we spend time and resources to develop such a digital platform and to explore the market potential for such a digital platform, there is no assurance that we will develop a product that can be sold on terms that are commercially acceptable to us. Moreover, even if we develop the digital platform and enter into sales agreements for it, these agreements may not be as beneficial to us as we expected at the time of entering into the underlying agreement. Any of the foregoing may adversely affect our business, financial condition, results or operations and prospects~~ . We intend to explore alternative, co- active use case opportunities for our systems, but there is no assurance that such opportunities exist or that they would be as beneficial to us as we expect. We intend to explore alternative, co- active use case opportunities for our energy storage systems. For example, we intend to explore opportunities in energy- intensive industries such as vertical farming, data centers, direct air carbon capture where our systems may be able to benefit from existing infrastructure, including physical enclosures and electrical systems, that are built into the designs for our energy storage systems. Even after we spend time and resources exploring such opportunities, there is no assurance that they exist on terms that are commercially acceptable to us. Moreover, even if we enter into agreements to make use of such opportunities, such opportunities may not be as beneficial to us as we expected at the time of entering into the underlying agreement. Any of the foregoing may adversely affect our business, financial condition, results or operations and prospects. Our success depends on our ability to generate revenue and operate profitably, which depends in part on our ability to identify target customers and convert such contacts into meaningful orders or expand on current customer relationships. To date, we have ~~not~~ **only** deployed **two** ~~any fully~~ operational energy ~~storage systems (aside from the CDU), although we are performing on customer contracts to construct energy storage~~ systems. While our contracts do provide that our customers will be obligated to pay us certain fees in the event of termination for their convenience, such fees may not be sufficient to cover our costs and we would not realize the expected revenue associated with such cancelled contracts. Potential and contracted customers may abandon their indications of interest, or fail to honor contractual obligations and non- binding letters of interest may be cancelled or delayed by a customer for any reason or its terms may be amended in an manner adverse to us in connection with negotiating a definitive sales agreement. For that reason, there can be no assurance that any current or future indications of interest (including awards, submitted proposals or short- lists) or non- binding letters of intent will result in binding orders or sales. Furthermore, in light of our limited operating history, it is difficult for us to predict the rates at which the non- binding letters of intent or other indications of interest in our pipeline will result in binding orders or sales. It is also difficult for us to predict how quickly we will be able to fill binding orders in the event that we obtain multiple orders. In addition, revenue is expected to be recognized in stages, and customers may in some cases delay actual cash payments regardless of progressive billings. Additionally, a customer' s ability to make payments could decline during the sales process, even to the point of insolvency or bankruptcy. As a result, our operating results and cash flow may be materially lower than we expect. Our future growth depends upon our ability to maintain relationships with third parties, and the terms and enforceability of many of these relationships are not certain. We expect to rely on engineering, procurement, construction, or EPC, firms as third- party general contractors to install energy storage systems at our customers' sites. We are likely to work with a limited number of such EPC firms, which may impact our ability to facilitate customer installations as planned. Our work with contractors or their sub- contractors may have the effect of our being required to comply with additional rules (including rules unique to our customers), working conditions, site remediation and other union requirements, which can add costs and complexity to an installation project. In the future, the timeliness, thoroughness and quality of installation- related services performed by our general contractors and their sub- contractors may not meet our expectations and standards and it may be difficult to find and train third- party general contractors that meet our standards at a competitive cost. In addition, a key component of our growth strategy is to develop or expand our relationships with third parties. For example, we are investing resources in establishing strategic relationships with market players across a variety of industries, including, large renewable project developers, commercial agents, environmental organizations and unions, to generate new customers or to grow our business. These programs may not roll out as quickly as planned or produce the results we anticipated. A significant portion of our business depends on attracting new partners and retaining existing partners, and such relationships may not be predicated on enforceable agreements or any agreements at all. We depend upon component and product manufacturing and logistical services provided by third parties, many of whom are located outside of the U. S. A significant amount of our components, including batteries utilized in our BESS offerings, and products are manufactured in whole or in part by a few third- party manufactures. Many of these manufacturers are located outside of the U. S. ~~and are all located within a relatively small geographic location.~~ If a catastrophic event occurs **relative to** ~~within this area, or the~~ **these third- party manufacturers, or the political,** social **,** or economic conditions shift within ~~this~~ **their respective** ~~geography~~ **geographies or between trade partners** , we could experience business interruptions, delayed delivery of products, or other adverse impacts to our ongoing business. We have also outsourced much of our transportation and logistics management. While these arrangements may lower operating costs, they also reduce our direct control over production and distribution. Such diminished control could have an adverse effect on the quality or quantity of our products as well as our flexibility to respond to changing conditions. In addition, we rely on third- party manufacturers to adhere to the terms and conditions of the agreements in place with each party. For example, although arrangements with such manufacturers may contain provisions for warranty expense reimbursement, we may remain responsible to the customer for warranty service in the event of product defects. Any unanticipated product or warranty liability, whether pursuant to arrangements with contract manufacturers or otherwise, could adversely affect our reputation, financial condition, and operating results. **The failure or inability of our suppliers to deliver necessary components or raw materials for construction of our energy storage systems and their failure or inability to deliver them in a timely manner could cause installation delays, cancellations, penalty payments and damage to our reputation.** We rely on a limited number of third- party suppliers for some of the components and raw materials such as steel, cement, polymers and, in certain cases, coal ash waste and retired wind turbine blades, and other materials that may be of limited supply for our GESSs and batteries, inverters, enclosures, and transformers for our BESSs. If any of our suppliers fail or are unable to provide sufficient components or raw materials at the level of quality required, or if our suppliers fail or are unable to or unwilling to provide us with the contracted quantities (as we have limited or in some case no alternatives for supply), or if our suppliers cancel the contracted quantities without sufficient lead time to order the materials from another supplier, or if our suppliers fail or are unable to deliver the components or raw materials in a timely manner, then delays, cancellations, penalty payments, or damage to our reputation could occur, which could have a material adverse effect on our business and our results of operations. If we fail to develop or maintain our relationships with any of our suppliers, or if there is otherwise a shortage, lack of availability, or cancellation of the purchase of any required raw materials or components, we may be unable to manufacture our energy storage systems or such products may be available only at a higher cost or after a long delay. Additionally, there are increasing expectations in various jurisdictions that companies monitor the environmental and social performance of their suppliers, including **sourcing of materials and** compliance with a variety of labor practices, as well as consider a wider range of potential environmental and social matters, including the end **-** of **-** life considerations for products **. In addition, increasing concern and focus on limiting forced labor may result in additional regulations targeting the markets we operate in and from which we source products and materials. Certain existing laws impose prohibitions on the importation of goods made with forced labor or compulsory prison labor, including the Tariff Act of 1930, the Uyghur Forced Labor Prevention Act (" UFLPA "), and other global laws against forced labor. The UFLPA places restrictions on imports from Xinjiang, a key source of materials in global supply chains** . Compliance can be costly, require us to establish or augment programs to diligence or monitor our suppliers, or to design supply chains to avoid certain regions altogether. Failure to comply with such regulations can result in fines, reputational damage, import ineligibility for our products or product components, or otherwise adversely impact our business. Current or future supply chain interruptions that could be exacerbated by global political tensions, such as the situation in Ukraine **, conflict in the Middle East** , and public health emergencies, could also negatively impact our ability to acquire necessary raw materials and components. Such delays could prevent us from delivering our energy storage systems to customers within required time frames and cause order cancellations. Developing required raw materials and constructing required components for our products are time and capital intensive. Accordingly, the number of suppliers we have for some of our components and materials is limited and, in some cases, sole sourced. We may be unable to obtain comparable components from alternative suppliers without considerable delay, expense, or at all. If our suppliers face difficulties obtaining the credit or capital necessary to expand their operations when needed, they could be unable to supply necessary raw materials and components needed to support our planned sales and services operations, which would negatively impact our sales volumes and cash flows. Our systems often rely on interconnections to distribution and transmission facilities that are owned and operated by third parties, and as a result, are exposed to interconnection and transmission facility development and curtailment risks. A primary potential use case for our energy storage systems involves interconnection with electric distribution and transmission facilities owned and operated by regulated utilities, and independent system operators, necessary to deliver the electricity that our energy storage systems produce. A failure or delay in the operation or development of these distribution or transmission facilities could result in a loss of revenues or breach of a contract because such a failure or delay could limit the amount of renewable electricity that our energy storage systems deliver or delay the completion of our customers' construction projects. In addition, certain of our energy storage systems' generation may be curtailed without compensation due to distribution and transmission limitations, reducing our revenues and impairing our ability to capitalize fully on a particular customer project' s potential. Such a failure or curtailment at levels above our expectations could adversely affect our business. Our business is subject to risks relating to construction, cost overruns and delays. The installation and operation of our energy storage systems at a particular site is generally subject to oversight and regulation in accordance with national, state **, tribal,** and local laws and ordinances relating to building codes, **health and** safety, environmental protection, FERC and specific Independent System Operators regulation and related matters, and typically requires obtaining and keeping in good standing various local and other governmental approvals and permits, including environmental approvals and permits, that vary by jurisdiction. In some cases, these approvals and permits require periodic renewal. It is difficult and costly to track the requirements of every individual authority having jurisdiction over energy storage system installations, to design our energy storage systems to comply with these varying standards, which may change over time, and for **us and our** customers to obtain all applicable approvals and permits. We cannot predict whether or when all permits **and approvals** required for a given ~~customer' s~~ project will be granted or whether the conditions associated with the permits **and approvals** will be achievable. The denial of a permit or **approval or** utility connection **that is** essential to a project or the imposition of impractical conditions would impair our **or our** customer' s ability to develop the project. In addition, we cannot predict whether the permitting **and approvals** process will be lengthened due to complexities and appeals. Delay in the review and permitting process for a project can impair or delay **our or** our customers' abilities to develop that project or increase the cost so substantially that the project is no longer attractive to our customers. Furthermore, unforeseen delays in the review and permitting process could delay the timing of the installation of our energy storage systems and could therefore adversely affect the timing of the recognition of revenue related to hardware acceptance by our customer, which could adversely affect our operating results in a particular period. Delays relating to constructions may also bring about cost overruns, which could further adversely affect our business. In addition, the successful installation of our energy storage systems is dependent upon the availability of and timely connection to the local electric grid. Before beginning construction on an energy storage system, we may be unable to obtain in a timely fashion or at all the required consent and authorization of local utilities to ensure successful interconnection to energy grids to enable the successful discharge of renewable energy to customers. Any delays in our customers' ability to connect with utilities, delays in the performance of installation- related services or poor performance of installation- related services will have an adverse effect on our results and could cause operating results to vary materially from period to period **. FERC issued Order No. 2023 on July 28, 2023 in an attempt to address interconnection queue backlogs and related issues with the interconnection process, including with respect to energy storage facilities. Transmission owners and operators are in the process of developing proposed rules to implement Order No. 2023, the results of which remain uncertain at this time** . The size of our GESSs may negatively impact our ability to enter into contracts with customers or obtain government permits and approvals. Our GESSs require a considerably larger space for their deployment than comparable systems based on certain technologies such as lithium- ion technology, and this can result in a significant delay in the permitting process. In addition, the size of our GESSs may represent an impediment for deployment in denser areas or areas with restrictions on the height of buildings. And, in light of the size of our systems, we generally require hard soil or the ability to get to bedrock in order to deploy our systems. These factors may negatively impact our ability to enter into customer contracts or obtain government permits and approvals, each of which may materially affect our business. The design of our GESSs are based on established principles that are deployed in a novel way;the GESSs are intended to provide longer energy storage durations than are provided by other types of energy storage systems.We believe that the continued growth and acceptance of energy storage generally will depend significantly on continued investment by the public and private sectors in the renewable energy industry,the regulatory environment focused on transitioning away from carbon- intensive power generation and the speed of transition towards electric mobility.The adoption of renewable energy may not proceed as quickly as (or at the levels that) we expect and may be influenced by changes in regulatory environments,including incentives,fuel prices,public policy concerns and other factors beyond our control.Additionally,potential customers who previously invested in alternatives to our GESS solution may not deem a transition to our existing or future GESS solutions to be cost- effective.Moreover,given the limited history of our GESS technology,potential customers may be hesitant to make a significant investment in our products.Our business,results of operations,financial condition and prospects could be adversely affected to the extent that customers,for any reason,do not adopt our systems or migrate to our systems from another energy storage technology. We face additional risks to the extent that customers choose to purchase energy storage and dispatch of electricity from systems we build and in which we retain an ownership interest rather than purchase an energy storage system. In certain circumstances we expect to enter tolling arrangements in which customers purchase the energy storage and dispatch of electricity from us while we retain an ownership interest in the system. To date, we have entered into one such tolling arrangement in respect to a battery plus green hydrogen hybrid energy storage system. We could face additional risks when we own and operate energy storage systems, **as** compared to when the customer owns and operates energy storage systems that we build. For example, we may need to seek equity and / or debt financing to fund the construction and operation of any energy storage systems built in connection with a project for a customer who chooses to enter into a tolling arrangement. Such financing may not be available on terms acceptable to us, if at all. Moreover, we expect that any such indebtedness would be secured by a lien on the related energy storage system, and the governing debt agreement may contain covenants imposing operating and financial restrictions on our operations. In addition, until any such debt is repaid, we may not be able to generate meaningful cash flow from the project. Moreover, the failure of our customers to make payments could trigger an event of default under such governing debt agreements, which could result in the acceleration of repayment of our outstanding indebtedness or even entitle our lender to foreclose on the collateral securing our debt. In addition, to the extent equity financing is also used, our right to receive cash flows from the project could be subordinated to the other equity investors. Additionally, there could be a material adverse effect on our operating results and our cash flows to the extent we own and operate our energy storage systems for the benefit of customers under tolling arrangements. For example, we would not expect to receive any payments from the customer until the system is completed and expenses relating to insurance premiums, personnel, and our interest payments under debt agreements would be increased, and such increases may be material. We could also be required to provide ongoing maintenance and repair services or could face liability for any damages or injuries if the system malfunctions. Additionally, we would be subject to the risks of termination of the agreement by the customer and the inability to replace the customer would result in the system failing to generate revenue. We may also incur liabilities as a result of a performance failure or other breach of our obligations in connection with the operation of the system. We may also be subject to additional legal and regulatory restrictions to the extent we own and operate an energy storage system, including relating to the transmission of energy. Such legal and regulatory restrictions could increase the costs of compliance and potentially subject us to threatened or actual litigation or administrative proceedings, each of which could have a material adverse effect on our business, operating results and financial condition. Although we don' t expect a significant majority of our revenue to come from owning and operating energy storage systems based on our current outlook, there is no assurance that this type of revenue will not account for a significant portion of our business in the future. Increasing attention to, and scrutiny of, ESG matters could increase our costs, harm our reputation, impact our share price or access to or cost of capital, or otherwise adversely impact our business. Companies across industries are facing increasing scrutiny from a variety of stakeholders related to their ESG and sustainability practices. Expectations regarding voluntary ESG initiatives and disclosures and consumer demand for alternative forms of energy may result in increased costs (including but not limited to increased costs related to compliance, stakeholder engagement, contracting and insurance), changes in demand for certain products, enhanced compliance or disclosure obligations, or other adverse impacts to our business, financial condition, or results of operations. While we may at times engage in voluntary initiatives (such as voluntary disclosures, certifications, or goals, among others) to improve the ESG profile of our company or to respond to stakeholder expectations, such initiatives may be costly and may not have the desired effect. Expectations around company' s management of ESG matters continues to evolve rapidly, in many instances due to factors that are out of our control. For example, we may ultimately be unable to complete certain initiatives or targets, **or execute on any opportunities we have identified,** either on the timelines initially announced or at all, due to technological, cost, or other constraints, which may be within or outside of our control. Moreover, actions or statements that we may take based on based on expectations, assumptions, or third- party information that we currently believe to be reasonable may subsequently be determined to be erroneous or be subject to misinterpretation. If we fail to, or are perceived to fail to, comply with or advance certain ESG initiatives (including the timeline and manner in which we complete such initiatives) **, or to not keep pace with peers on ESG initiatives and / or disclosures** , we may be subject to various adverse impacts, including reputational damage and potential stakeholder engagement and / or litigation, even if such initiatives are currently voluntary. For example, there have been increasing allegations of greenwashing against companies making significant ESG claims due to a variety of perceived deficiencies in performance or methodology, including as stakeholder perceptions of sustainability continue to evolve. Certain market participants, including major institutional investors and capital providers, use third- party benchmarks and scores to assess companies' ESG profiles in making investment or voting decisions. Unfavorable ESG ratings could lead to increased negative investor sentiment towards us, which could negatively impact our share price as well as our access to and cost of capital. To the extent ESG matters negatively impact our reputation, it may also impede our ability to compete as effectively to attract and retain employees ~~or~~ **,** customers **, and / or business partners** , which may adversely impact our operations. **While many stakeholders expect companies to pursue ESG initiatives, other may seek to reduce companies' efforts on certain ESG- related matters. Both advocates and opponents to certain ESG matters are increasingly resorting to a range of activism forms, including media campaigns and litigation, to advance their perspectives.** In addition, ~~we expect~~ there **are also** ~~will likely be~~ increasing levels of regulation, disclosure- related and otherwise, with respect to ESG matters. **We may ultimately** ~~In addition, we expect there will likely~~ be **subject to** ~~increasing levels of regulation~~ **regulations** ~~, disclosure- related and otherwise, with respect~~ **that are not uniform in nature or reflective of shared regulatory goals. Our efforts** to ~~ESG matters~~ **respond to varying requirements may not be successful and / or may subject us to additional stakeholder engagement** . This and other stakeholder expectations will **also** likely lead to increased costs as well as scrutiny that could heighten all of the risks identified in this risk factor. Additionally, many of our customers and suppliers may be subject to similar expectations, which may augment or create additional risks, including risks that may not be known to us. Should we pursue acquisitions in the future, it would be subject to risks associated with acquisitions. We may acquire additional assets, products, technologies, or businesses that are complementary to its existing business. The process of identifying and consummating acquisitions and the subsequent integration of new assets and businesses into our own business would require attention from management and could result in a diversion of resources from its existing business, which in turn could have an adverse effect on its operations. Acquired assets or businesses may not generate the expected financial results. Acquisitions could also result in the use of cash, potentially dilutive issuances of equity securities, the occurrence of goodwill impairment charges, amortization expenses for other intangible assets and exposure to potential unknown liabilities of the acquired business. If we complete future acquisitions, we may not ultimately strengthen our competitive position or achieve our goals and business strategy. We may be subject to claims or liabilities assumed from an acquired company, product, or technology; acquisitions we complete could be viewed negatively by our customers, investors, and securities analysts; and we may incur costs and expenses necessary to address an acquired company' s failure to comply with laws and governmental rules and regulations. Additionally, we may be subject to litigation or other claims in connection with the acquired company, including claims from terminated employees, former stockholders or other third parties, which may differ from or be more significant than the risks our business faces. If we are unsuccessful at integrating future acquisitions in a timely manner, or the technologies and operations associated with such acquisitions, our revenue and operating results could be adversely affected. Any integration process may require significant time and resources, which may disrupt our ongoing business and divert management' s attention, and we may not be able to manage the integration process successfully or in a timely manner. We may not successfully evaluate or utilize the acquired technology or personnel, realize anticipated synergies from the acquisition, or accurately forecast the financial impact of an acquisition transaction and integration of such acquisition, including accounting charges and any potential impairment of goodwill and intangible assets recognized in connection with such acquisitions. We may have to pay cash, incur debt, or issue equity or equity- linked securities to pay for any future acquisitions, each of which could adversely affect our financial condition or the market price of our common stock. Furthermore, the sale of equity or issuance of equity- linked debt to finance any future acquisitions could result in dilution to our stockholders. The occurrence of any of these risks could harm our business, operating results, and financial condition. Our operations are international, and expanding operations in some international markets could expose us to additional risks. Our operations are international, and we continue to expand our business internationally as we seek to partner with customers, suppliers and other partners around the world. We currently have operations in Switzerland, **Australia, United Kingdom, sales agents in other territories,** and our signed purchase order and letters of intent are with counterparties around the world. Managing further international expansion will require additional resources and controls including additional support, manufacturing, and assembly facilities. Any expansion internationally could subject our business to risks associated with international operations, including: • conformity with applicable business customs, including translation into foreign languages and associated expenses; • lack of availability of government incentives and subsidies; • challenges in arranging, and availability of, financing for our customers; • potential changes to our established business model; • cost of alternative power sources, which could be meaningfully lower outside the United States; • availability and cost of raw materials, labor, equipment for manufacturing or assembling our energy storage systems; • difficulties in staffing and managing foreign operations in an environment of diverse culture, laws, and customers, and the increased travel, infrastructure **, finance** , and legal and compliance costs associated with international operations; • installation challenges which we have not encountered before which may require the development of a unique model for each country; • compliance with multiple, potentially conflicting and changing governmental laws, regulations, and permitting processes including construction, environmental, banking, employment, tax, ~~privacy,~~ safety, security, grid minimum performances, and data **privacy and** protection laws and regulations; • compliance with U. S. and foreign anti- bribery laws including the Foreign Corrupt Practices Act and the U. K. Anti- Bribery Act; • greater difficulties in securing or enforcing our intellectual property rights in certain jurisdictions, or greater chance potential infringement of third- party intellectual property rights in new jurisdictions; • difficulties in funding our international operations; • difficulties in collecting payments in foreign currencies and associated foreign currency exposure; • restrictions on repatriation of earnings; • compliance with potentially conflicting and changing laws of taxing jurisdictions where we conduct business and compliance with applicable U. S. tax laws as they relate to international operations, the complexity and adverse consequences of such tax laws, and potentially adverse tax consequences due to changes in such tax laws; • increases or decreases in our expenses caused by fluctuation in foreign currency exchange rates; • changes in import tariffs imposed by local governments; • changes in regulations regarding the use of waste materials in our products; • changes in regulations that would prevent us from doing business in specified countries; • failure of the supply chain in local countries to provide us with materials of a sufficient quality and quantity delivered on timelines we expect **; • the impacts of government spending on infrastructure projects and more broadly, including any impacts of government debt defaults or budget crises (including in the United States)** ; • the outbreak of war or other hostilities; and • regional economic and political conditions. As a result of these risks, any potential future international expansion efforts that we may undertake may not be successful. In addition, nearly all of our letters of intent are denominated in U. S. dollars, and certain of our definitive agreements could be denominated in currencies other than the U. S. dollar. A strengthening of the U. S. dollar could increase the cost of our solutions to our international customers, which could adversely affect our business and results of operations. In addition, if an increased portion of our operating expenses is incurred outside the United States and is denominated in foreign currencies, we would be subject to increased financial impacts resulting from fluctuations in foreign currency exchange rates. If we become more exposed to currency fluctuations and are not able to successfully hedge against the risks associated with currency fluctuations, our results of operations could be adversely affected. Our future growth is dependent upon the pace and depth of renewable energy adoption and energy storage technologies, which are emerging industries, as well as our competition. If the markets for renewable energy and energy storage do not develop as we expect, or if they develop more slowly than we expect, our business, prospects, financial condition and operating results could be adversely affected. Our future growth depends upon factors in our industry, including with respect to our competition, the speed at which the market adopts renewable energy, our ability to penetrate such market and the state of energy storage technologies. Because renewable energy and energy storage are emerging industries, they are evolving and characterized by rapidly changing technologies, changing government regulation and industry standards and changing consumer demands and behaviors. If the markets for these do not develop as we expect, including if they develop more slowly than we expect, demand for our energy storage systems or any digital platform that we may develop, our business, prospects, financial condition and operating results could be adversely affected. Additionally, the energy storage market is largely driven by installed capacity of renewable electricity generation and increasing demand for renewable sources of power. Since many of these renewable sources of power are intermittent, like wind and solar, the energy produced by them must be stored for use when there is demand. Should government requirements for these intermittent power sources be relaxed or social desires for lower- carbon sources of energy decline, there could be a detrimental impact on one of our primary markets. Even if renewable energy and energy storage become more widely adopted, our energy storage technology may not achieve widespread market acceptance or may be less cost- effective as compared to competing technologies. Our business depends on the acceptance of our products in the marketplace. Even if renewable energy and energy storage become more widely adopted than they have been to date, potential customers may choose energy storage products from our competitors that are based on their technologies. If they do so, it may be difficult to later transition such potential customers to products offered by us. Moreover, the marketplace for renewable energy storage products is rapidly evolving, and competing technologies of which we are currently unaware may emerge in the future. If the energy storage technology that supports our products does not achieve market acceptance, then our business and results of operations would be materially adversely affected. The growth and profitability of our business is dependent upon our technology being more cost- effective than competing energy storage technologies. To the extent our offerings are not eligible for various regulatory incentives, while those of our competitors are, it may adversely impact our competitiveness or otherwise adversely impact our business. We operate in highly competitive energy industries and there is increasing competition. Many of our competitors and future competitors may have significantly more financial and other resources than we do and if we do not compete effectively, our competitive positioning and our operating results will be harmed. The energy markets in which we compete continue to evolve and are highly competitive. Many of our current and potential competitors are large entities at a more advanced stage in development and commercialization than we are and in some cases have significantly more financial and other resources, including larger numbers of managerial and technical personnel, to increase their market share. For example, several companies, such as ESS Inc., Eos Energy Enterprises Inc., Hydrostor Inc. and Primus Power, have each announced plans and demonstrated prototypes of products that would compete in the energy storage market, and battery vendors with whom we compete, such as Tesla, Inc., Fluence Energy, Inc., LG Chem, Ltd., Samsung Electronics Co., Ltd and Contemporary Amperex Technology Co. Limited, have already commercialized their respective energy storage solution products. Companies such as Tesla, Inc., Fluence Energy, Inc. and Wartsila Corporation **have developed or** are ~~also~~ developing their own energy management software. If our competitors continue to penetrate the renewable energy, energy storage and energy management software markets, we may experience a reduction in potential and actual market share. **Furthermore, certain industry participants against whom we do not currently compete (including, in some cases, our suppliers) may shift their strategic focus and begin competing directly with us.** To date, we have focused our efforts on recruiting management and other employees, business planning, raising capital, selecting applicable third **-** party technologies, establishing and attempting to establish partnerships with potential suppliers, customers and ecosystem partners, developing our gravity, battery, and green hydrogen energy storage systems, a digital platform, and general corporate development. We expect competition in energy storage technology to intensify due to a regulatory push for lower- carbon energy sources, including intermittent sources such as wind and solar, continuing globalization, and consolidation in the energy industry. Developments in alternative technologies or improvements in energy storage technology made by competitors may materially adversely affect the sales, pricing and gross margins of our future energy storage systems and any digital platform. If a competing process or technology is developed that has superior operational or price performance, our business would be harmed. Furthermore, our energy storage technology also competes with other emerging or evolving technologies, such as thermal storage, chemical storage, and carbon capture storage and sequestration. If we are unable to keep up with competitive developments, including if such technologies achieve lower prices or enjoy greater policy support than our technology, our competitive position and growth prospects may be harmed, which would adversely affect our business, prospects and financial condition. Some of our current and potential competitors have longer operating histories and greater financial, technical, marketing and other resources than we do. These factors may allow our competitors to respond more quickly or efficiently than we can to new or emerging technologies. These competitors may engage in more extensive research and development efforts, undertake more far- reaching marketing campaigns and adopt more aggressive pricing policies, which may allow them to more effectively compete for new energy storage projects and energy management software customers. We intend to continue committing significant resources to establish a competitive position. There is no assurance we will successfully identify the right partners or produce and bring our energy storage systems and a digital platform to market on a timely basis, if at all, or that products and technologies developed by others will not render our energy storage systems and any digital platform that we may develop obsolete or noncompetitive, any of which would adversely affect our business, prospects and operating results. If we are unable to attract and retain key employees and hire qualified management, technical, engineering, and sales personnel, including a highly skilled and diverse management team with experience in the energy storage sectors, our ability to compete and successfully grow our business could be harmed. We believe that our success and our ability to reach our strategic objectives are highly dependent on the contributions of our key management, technical, engineering and sales personnel. The loss of the services of any of our key employees could disrupt our operations, delay the development and introduction of our products and services, including with respect to our prototype products, and negatively impact our business, prospects and operating results. In particular, we are highly dependent on the services of Robert Piconi, our Chief Executive Officer, Marco Terruzzin, our Chief Product Officer, **and** Andrea Pedretti, our Chief Technology Officer. None of our key employees is bound by an employment agreement for any specific term. We cannot assure you that we will be able to successfully attract and retain senior leadership necessary to grow our business. Furthermore, there is increasing competition for talented individuals in our field, and competition for qualified personnel is especially intense in the renewable energy and energy storage industry in the ~~USA~~ **U. S., Australia,** and Switzerland, where ~~, collectively,~~ our ~~primary~~ offices are located. Our failure to attract and retain our executive officers and other key technology, sales, marketing and support personnel, could adversely impact our business, prospects, financial condition, and operating results ~~. In addition, we do not have " key person " life insurance policies covering any of our officers or other key employees~~ . We believe that it is vital to our operating success that we recruit and retain key personnel, including a highly skilled and diverse management team with experience in the renewable energy and energy storage sectors. If we fail to maintain a highly skilled and diverse management team, we may not be able to achieve our strategic objectives, which would negatively impact our business and operating success. In addition, because our industry is still in a nascent stage, there is and will continue to be a scarcity of skilled personnel with experience in our industry. If we lose a member of our management team or key employee, it may prove difficult for us to replace **such employee** ~~him or her~~ with a similarly qualified individual with experience in the renewable energy and energy storage industry, which could impact our business and operating success. Labor disputes could disrupt our ability to serve our customers and / or lead to higher labor costs. As of December 31, ~~2022~~ **2023** , we employed ~~170~~ **179** full- time employees and ~~7~~ **4** part- time employees, none of whom are represented by unions ~~and~~ **, except that** one employee **is** covered by a collective bargaining agreement. If a union sought to organize any of our **other** employees, such organizing efforts or collective bargaining negotiations could potentially lead to work stoppages and / or slowdowns or strikes by certain of our employees. Additionally, the EPC firms that we rely upon to install our energy storage systems may have employees represented by unions or collective bargaining agreements. Any work stoppages and / or slowdowns by certain of our employees or certain employees at the EPC firms we contract with, could adversely affect our ability to serve our customers. Further, settlement of actual or threatened labor disputes or an increase in the number of our employees covered by collective bargaining agreements could lead to higher labor costs and could impair productivity and flexibility. Our management has limited experience in operating a public company. Our executive officers have limited experience in the management of a publicly traded company. Our management team may not successfully or effectively manage the current transition to a public company that is subject to significant regulatory oversight and reporting obligations under federal securities laws. Their limited experience in dealing with the increasingly complex laws pertaining to public companies could be a significant disadvantage in that it is likely that an increasing amount of their time may be devoted to these activities which results in less time being devoted to the management and growth of our business. We may not have adequate personnel with the appropriate level of knowledge, experience, and training in the accounting policies, practices or internal controls over financial reporting required of public companies in the United States. The development and implementation of the standards and controls necessary for us to achieve the level of accounting standards required of a public company in the United States may require costs greater than expected. It is possible that the Company will be required to expand its employee base and hire additional employees to support our operations as a public company which will increase our operating costs in future periods. Changes in business, economic, or political conditions, including overall changes in demand, are beyond our control and could impact our business, resulting in lower revenues and other adverse effects to our results of operations. Economic uncertainty and associated macroeconomic conditions, including heightened inflation, capital markets volatility, interest rate and currency rate fluctuations, and economic slowdown or recession, have resulted and may continue to result in unfavorable conditions that negatively affect demand for our products and exacerbate some of the other risks that affect our business, financial condition, and results of operations. Both domestic and international markets experienced inflationary pressures in 2022 and **parts of 2023 and, while inflation has moderated recently,** inflation rates in the U. S., as well as in other countries in which we operate, **may increase again in** ~~are currently expected to continue at elevated levels for~~ the near- term. In addition, the Federal Reserve in the U. S. and other central banks in various countries have raised, and may again raise, interest rates in response to concerns about inflation, which, coupled with reduced government spending and volatility in financial markets, has had and may continue to have the effect of further increasing economic uncertainty and heightening these risks. Interest rate increases or other government actions taken to reduce inflation have resulted in recessionary pressures in many parts of the world. Furthermore, currency exchange rates have been especially volatile in the recent past, and these currency fluctuations have affected, and may continue to affect, the reported value of our assets and liabilities, as well as our cash flows. A significant downturn in the domestic or global economy may cause our customers to pause, delay, or cancel spending on our offerings or seek to lower their costs by exploring alternatives. To the extent purchases of our offerings are perceived by customers and potential customers as discretionary, our revenue may be disproportionately affected by delays or reductions in energy storage spending. Also, competitors may respond to challenging market conditions by lowering prices and attempting to lure away our customers. Similarly, our business depends on the overall business and global or regional political conditions, which are beyond our control. We cannot predict the timing, strength, or duration of any economic slowdown or any subsequent recovery generally, or any industry in particular or how global business and political conditions may change. To the extent that general business, economic or political conditions, including overall changes in demand for our products, decline, our business, financial condition and results of operations, including revenues, could be materially adversely affected. The productivity of our or our customers' facilities, the operation of our supply chain, the demand, performance and availability of our products, our services, our systems and our business in general may be affected by factors outside of our control, which could result in harm to our business and financial results. The productivity of our or our customers' facilities, the operation of our supply chain, the demand, performance and availability of our products, our services, our systems and our business in general could be adversely affected by events outside of our control, such as natural catastrophic events, geographical instability, wars, and other calamities. We cannot assure you that, collectively, our process and procedures to recover from a disaster or catastrophe will be adequate to protect us from the effects of fire, floods, typhoons, earthquakes, power loss, telecommunications failures **, cyberattacks and other information security incidents** , break- ins, war, riots, terrorist attacks, pandemics, or similar events outside of our control, certain of which may become more frequent or intense as a result of climate change. For more information, see our risk factor titled " We are subject to a series of risks related to climate change. ". The severity of such factors and frequency at which they occur are also outside our control. If such factors occur our business, financial condition and results of operations, including revenues, could be materially adversely affected. There are inherent climate- related risks wherever business is conducted. Certain of our facilities, as well as third- party infrastructure **on which** we rely ~~on~~ , are located in areas that have experienced, and are projected to continue to experience, various meteorological phenomena (such as drought, heatwaves, wildfire, storms, ~~and~~ flooding **, freezes, and winter storms** , among others) or other catastrophic events that may disrupt our or our suppliers' operations (as well as grid connections), require us to incur additional operating or capital expenditures, **result in facility shutdowns, decrease productivity, result in operational risks and increased risks to employee safety,** or otherwise adversely impact our business, financial condition, or results of operations. Climate change may increase the frequency and / or intensity of such events. For example, in certain areas, there has been an increase in power shutoffs associated with wildfire prevention **. Climate change may also result in various chronic changes to the physical environment, such as changes to water levels, air quality, and / or ambient temperature and precipitation patterns. Physical risks may also compound and contribute to further or more intense impacts** . While we may take various actions to mitigate our business risks associated with climate change, this may require us to incur substantial costs and may not be successful, due to, among other things, the uncertainty associated with the longer- term projections associated with managing climate risk. For example, to the extent such events become more frequent or intense, we may not be able to procure insurance to cover all potential losses on terms we deem acceptable. **We are subject to certain risks associated with the energy transition. We anticipate there will be costs associated with transitioning to lower emissions technologies, as well as risks associated with newer technologies, including risks that particular technologies we invest in may not ultimately prove successful or financially viable, as well as other risks that may not presently be known to us. Similarly, the price and availability of various inputs for the products we offer, including electricity and various metals, vary in response to market trends, which may result in higher costs and / or operational disruptions, or other adverse impacts. These impacts may also be exacerbated by various responses from policymakers, including in manners that may for national security or other factors that do not promote the availability or affordability of such materials.** Additionally, we expect to be subject to increased regulations, reporting requirements, standards **,** or expectations regarding the environmental impacts of our business. For example, **policymakers in various jurisdictions, including** the ~~SEC has published propose rules that would require companies to provide significantly expanded~~ **United States, United Kingdom, Australia, European Union, and the State of California, among others, have adopted or are considering adopting GHG pricing mechanisms, GHG emission limits, and / or requirements for the disclosure of certain** climate- related **information** ~~disclosures in their periodic reporting~~ , which may require us to incur significant additional costs to comply and impose increased oversight obligations on our management and board of directors (" Board ") **. Such regulations may also impact our supply chain and the cost of various materials used in our offerings; while we are working to find alternatives to certain materials, we cannot guarantee that we will be able to find suitable alternatives at a cost, quality, or timeframe that is acceptable to us. Government efforts to promote climate resiliency may also result in increased regulatory obligations across a range of laws, not all of which may be primarily climate- related** . The expectations of various stakeholders, including customers and employees, regarding such matters likewise continues to evolve. For more information, see our risk factor titled " Increasing attention to, and scrutiny of, environmental, social, and governance matters could increase our costs, harm our reputation, impact our share price or access to or cost of capital, or otherwise adversely impact our business. " Changing market dynamics, global and domestic policy developments, and the increasing frequency and impact of meteorological phenomena have the potential to disrupt our business, the business of our suppliers and / or customers, or otherwise adversely impact our business, financial condition, or results of operations. Fuel prices, including volatility in the cost of diesel or natural gas or a prolonged period of low gasoline and natural gas costs, could decrease incentives to transition to renewable energy. A portion of the current and expected demand for renewable energy results from concerns about volatility in the cost of gasoline and other petroleum- based fuel, the dependency of the United States on oil from unstable or non- aligned countries, government regulations and economic incentives promoting fuel efficiency and alternative forms of energy, as well as concerns about climate change resulting in part from the burning of fossil fuels. If the cost of gasoline and other petroleum- based fuel decreases significantly, the outlook for the long- term supply of oil to the United States improves, the government eliminates or modifies its regulations or economic incentives related to fuel efficiency and alternative forms of energy or there is a change in the perception in the cost- benefit analysis regarding the effects of burning fossil fuels on the environment, the demand for renewable energy, including energy storage products such as ours, could be reduced, and our business and revenue may be harmed. Diesel, gasoline, natural gas, and other petroleum- based fuel prices have historically been extremely volatile, and it is difficult to ascertain whether such volatility will continue to persist. Lower gasoline and natural gas costs over extended periods of time may lower the perception in government and the private sector that cheaper, more readily available energy alternatives, such as wind and solar, should be developed and produced. If gasoline or other petroleum- based fuel prices remain at deflated levels for extended periods of time, the demand for renewable energy may decrease notwithstanding incentives to transition to renewable energy, which would have an adverse effect on our business, prospects, financial condition and results of operations. Our insurance coverage, customer indemnifications or other liability protections may be unavailable or inadequate to cover all of our significant risks, which could adversely affect our profitability and overall financial position. We endeavor to obtain insurance to cover significant risks and liabilities (including, for example, natural disasters, ~~cyber security~~ **cybersecurity** , defective hardware and software and products liability). Not every risk or liability can be insured, and insurance coverage is not always reasonably available. The policy limits and terms of coverage reasonably obtainable may not be sufficient to cover actual losses or liabilities. Even if insurance coverage is available, we are not always able to obtain it at a price or on terms acceptable to us or without increasing exclusions. Disputes with insurance carriers over the availability of coverage, and the insolvency of one or more of our insurers may affect the availability or timing of recovery, as well as our ability to obtain insurance coverage at reasonable rates in the future. In some circumstances we may be entitled to certain legal protections or indemnifications from our suppliers through contractual provisions, laws or otherwise. However, these protections are not always available, are difficult to negotiate and obtain, are typically subject to certain terms or limitations, including the availability of funds, and may not be sufficient to cover our losses or liabilities. If insurance coverage, customer indemnifications and / or other legal protections are not available or are not sufficient to cover risks or losses, it could have a material adverse effect on our financial position, results of operations and / or cash flows. Risks Related to Our Financial Condition and Liquidity ~~During~~ **As a public reporting company, we are subject to the rules** ~~an~~ **and regulations established from time to time by the SEC and NYSE. These rules and regulations require, among other things, that we have, and periodically** ~~evaluation~~ **evaluate** ~~of the effectiveness of~~ **, procedures with respect to** our internal control over financial reporting **. Reporting obligations** as ~~of December 31, 2022,~~ **a public company are likely to continue to place a considerable strain on our financial and** management ~~identified~~ **systems, processes and controls, as well as on our personnel. In addition, as** a ~~material weakness in~~ **public company we are required to document and test** our internal control over financial reporting **pursuant** ~~. If we continue~~ to **Section 404 of the Sarbanes- Oxley Act so that** ~~fail to maintain proper and effective internal controls over financial reporting or~~ **our** ~~are unable to remediate the material weakness in our internal controls over financial reporting, our ability to produce accurate and timely financial statements could be impaired, and investors' views of us could be harmed. Management~~ **management can certify** ~~has~~ - **as** ~~assessed~~ **to** the effectiveness of **our** ~~the~~

~~Company' s~~ internal control over financial reporting ~~as of December 31, 2022~~. **Likewise** ~~As a result of this assessment~~, ~~management determined a material weakness in~~ **our independent registered public accounting firm is required to provide an attestation report on the effectiveness of** our internal control over financial reporting ~~existed~~ **. In connection with the preparation of our financial statements and the audit of our financial results for 2022, we had identified a material weakness in our internal controls** relating to the recognition of revenue from certain licensing contracts. **Although** ~~Specifically, in connection with one of our licensing contracts, we did not implement effective background check controls for an international customers' ability to pay in order to properly assess~~ the ~~probability that we will collect substantially all of the consideration to which we are entitled. Upon our discovery of this~~ material weakness **has been** ~~, additional substantive controls and procedures were performed to validate completeness and accuracy of underlying data and we determined and began implementation of a remediation~~ **remediated as** ~~plan. These additional substantive controls and procedures have allowed us to conclude that, notwithstanding the material weakness in our internal control over financial reporting, the consolidated financial statements included in this Annual Report fairly present, in all material respects, our financial position, results~~ of ~~operations~~ **December 31** , **2023,** ~~and cash flows for the periods presented in conformity with generally accepted accounting principles. There~~ **there** can be no assurance that **we** ~~our remediation plan~~ will ~~be successful~~ **not identify additional material weaknesses in the future** . ~~If we are~~ **In future periods, if our senior management is** unable to **conclude that we have** ~~remediate the material weakness timely and sufficiently or are otherwise unable to maintain~~ effective internal control over financial reporting, ~~our~~ - **or** ~~ability~~ to ~~report~~ **certify the effectiveness of such controls, or if our independent registered public accounting firm cannot render an unqualified opinion on management' s assessment and the effectiveness of our internal control over** financial ~~information timely~~ **reporting, or if additional material weaknesses in our internal control over financial reporting are identified, we may be required to restate our financial statements** and ~~accurately~~ could be **subject** ~~adversely affected, we may fail~~ to ~~meet our reporting requirements~~ **regulatory scrutiny, a loss of public** and **investor confidence, and to litigation from** investors ~~may lose confidence in the accuracy~~ and **stockholders, which could have** ~~completeness of our financial reports. As~~ a ~~result,~~ **material adverse effect on** our business ~~may be harmed,~~ and the ~~market~~ price of our common stock ~~could decline~~. In addition, **if** we **do not maintain adequate financial and management personnel, processes and controls, we may not be able to manage our business effectively or accurately report our financial performance on a timely basis, which** could ~~become~~ **cause a decline in our common stock price and adversely affect our results of operations and financial condition. Furthermore, our business has grown rapidly over the last several years and may continue to grow in the future. In the event of further growth, our internal controls over financial reporting may not be adequate to support our operations. Failure to comply with the Sarbanes- Oxley Act could potentially** subject **us** to **sanctions or** investigations by the **SEC, the** NYSE ~~or any other stock exchange on which our securities are then listed, the SEC~~ or other regulatory authorities ~~as a result~~, which ~~could~~ **would** require additional financial and management resources. **We** ~~In addition, even if we~~ are ~~successful in strengthening our controls and~~ - **an** ~~procedures~~ **early stage company with a history of losses** , **and expect to incur significant expenses and continuing losses for** ~~those~~ -- **the** ~~controls~~ **foreseeable future,** and ~~procedures~~ **we** may not be ~~adequate~~ **able** to **achieve profitability** ~~prevent or identify irregularities or ensure the fair and accurate presentation of our financial statements included~~ in ~~our periodic reports filed with~~ the ~~SEC~~ **future** . Since our inception in October 2017, we have incurred significant net losses and have used significant cash in our business. As of December 31, **2023 and** 2022 ~~and 2021~~, we had accumulated deficits of $ **248. 1 million and $** 147. 3 million ~~and $ 69. 0 million~~, respectively, and net losses of $ **98. 4 million and $** 78 ~~. 3 million and $ 31~~. 3 million, respectively, for the years ended December 31, **2023 and** 2022 ~~and 2021~~. We expect to continue to expand our operations, including by investing in manufacturing, sales and marketing, research and development and infrastructure to support our growth. We anticipate that we will incur net losses for the foreseeable future and there is no guarantee that we will achieve or maintain profitability. Our ability to achieve and maintain profitability in the future will depend on a number of factors, including: • successfully implementing our products on a commercial scale; • achieving meaningful sales volume; • the successful and timely development of our ~~EMS~~ **suite of software solutions** ; • attracting customers; • expanding into geographical markets; • ~~our~~ **the ability of** future customers ~~' ability~~ to **obtain** ~~attract and retain~~ financing **in** ~~partners who are willing to provide financing for sales on~~ a timely basis and with attractive terms **to enable them to purchase our solutions** ; • continuing to improve the expected useful life of our GESS technology and reducing our warranty servicing costs; • the cost of producing our energy storage systems; • successful continued development and deployment of our energy storage systems, including our GESS, BESS, and ~~gHESS~~ - **HESS** ; • ability to execute on our strategy to reduce costs, in the amount and on the timing projected; • ability to add waste material, such as coal ash and wind turbine blades, in the production of mobile masses; • improving the efficiency and predictability of our construction processes; • entering into agreements with suppliers and service providers for the maintenance of our systems and other strategic relationships; • improving the effectiveness of our sales and marketing activities and any independent sales representatives that we may engage; • attracting and retaining key talent in a competitive marketplace; • the amount and timing of stock- based compensation expenses; • identifying new opportunities for other business to integrate our product into their operations; • fluctuations in the costs of steel and raw materials **, including due to the enactment of tariffs in various countries (including the U. S.)** ; • legal and commercial acceptance of the incorporation of waste material (including, but not limited to, coal ash) into our mobile masses; and • delays associated with obtaining construction permits and potential regulatory review. The implementation of our business plan and strategy may require additional capital. If we are then unable to achieve sufficient sales to generate that capital or otherwise raise capital, it may create substantial doubt about our ability to pursue our business objectives and achieve profitability or to continue as a going concern. If adequate capital is not available to us, including due to the cost and availability of funding in the capital markets, our business, operating results and financial condition may be harmed. The development, design, ~~manufacture~~ **construction,** and sale of our energy storage systems is a capital- intensive business. As a result, we can be expected to continue to incur substantial operating expenses without generating sufficient revenues to cover expenditures. Over time, we may need to raise additional funds, including through entry into new joint venture arrangements, through the issuance of equity, equity- linked or debt securities or through obtaining credit from financial institutions to fund, together with our principal sources of liquidity, ongoing costs such as research and development relating to our products and technologies, the construction and tooling of prototypes, the implementation of our systems for our future customers, any significant unplanned or accelerated expenses, and new strategic investments. We cannot be certain that additional capital will be available on attractive terms, if at all, when needed, which could be dilutive to stockholders, and our financial condition, results of operations, business and prospects could be materially and adversely affected. Disruptions in the global capital markets and credit markets as a result of an economic downturn, economic uncertainty, changing interest rate yield curves, changing or increased regulations, or failures of significant financial institutions could adversely affect our cash resources or access to additional capital needed for business in the future. The Company maintains the majority of its cash and cash equivalents in accounts with major U. S. and multi- national financial institutions, and our deposits **are invested in short duration U** ~~at certain of these institutions exceed insured limits~~ . **S. Treasury bills, money** ~~Market~~ **market** ~~conditions can impact the viability of these institutions. In the event of failure of any of the financial institutions where we maintain our cash and cash equivalents, there can be no assurance that we would be able to access uninsured~~ funds **holding U** ~~in a timely manner or at all~~ . **S. Treasury bills,** ~~Any inability to access or delay in accessing these funds could adversely affect our business~~ and ~~financial position~~ **similarly rated agency indebtedness** . If adequate capital is not available to us, it may create substantial doubt among third parties, including suppliers and potential customers, about our ability to pursue our objectives, to achieve profitability or to continue as a going concern. Such doubt could materially and adversely impact our business, reputation and prospects. **Our** ~~Although we have not yet completed any full cycle from sale to installation of our~~ energy storage systems **involve a** ~~, we expect them to be~~ lengthy ~~. In order~~ **sales and installation cycle, and if we fail** to ~~make~~ **close sales on** a **regular and timely basis it could harm our business. Moreover, the long** ~~sale~~ **sales** ~~, we must typically provide a~~ **cycles for our energy storage systems and other factors may result in** significant ~~level of education~~ **fluctuations in our results from period** to ~~prospective~~ **period. While our** customers **are increasingly familiar with** ~~regarding the use and benefits of our products and~~ our technology ~~. The~~ **, the** period between initial discussions with a potential customer and the sale of even a single product typically depends on a number of factors, including the potential customer' s attitude towards innovative products, their budget and decision as to the type of financing it chooses to use, as well as the arrangement of such financing. ~~Prospective~~ **While our** customers ~~often undertake~~ **are evaluating our products, we have incurred, and expect to continue to incur, substantial sales, marketing, and research and development expenses to customize our products to the customer' s needs. As** a **result, these long sales cycles may cause us to incur** significant ~~evaluation~~ **expenses without ever receiving revenue to offset those expenses This lengthy decision making** process **is followed by substantial** ~~, which may further extend the sales cycle. Once a customer makes a formal decision to purchase our product, the~~ fulfillment **periods** ~~of the sales order by us requires a substantial amount of time~~ . Currently, we believe the time between the entry into a sales contract with a customer and the installation of our EVx systems could range from 18 to 36 months and BESSs could range from 9 to 18 months **, in each case** ~~. This lengthy sales and installation cycle is~~ subject to ~~a number of~~ significant risks ~~over which we have little or no control~~ . These lengthy sales and installation cycles increase the risk that our customers fail to satisfy their payment obligations or cancel orders before the completion of the transaction or delay the planned date for installation **.In addition,we expect that long sales** cycles and the expected limited number of customers for our energy storage systems **will** ~~is likely to~~ cause fluctuations in our operating results from period to period.As a result of how we recognize revenue **and other factors beyond our control** ,small fluctuations in the timing of the completion of our sales transactions could also cause operating results **,financial condition and results of operations** to vary materially from period to period ~~.In addition,our financial condition and results of operations may fluctuate in the future due to a variety of factors,many of which are beyond our control~~ .In addition to the other risks described herein,the following factors could also cause our financial condition and results of operations to fluctuate on a quarterly basis:• fluctuations in costs associated with the first **few** ~~group~~ **groups** of energy storage systems that we deploy;• the timing of customer installations of our energy storage systems,which may depend on many factors such as availability of inventory,product quality or performance issues,or local permitting requirements,utility requirements,environmental,health and safety requirements,weather and customer facility construction schedules, **customer interconnection timing,** availability and schedule of our third- party general contractors;• size of particular customer installations and number of sites involved in any particular quarter;• delays or cancellations of purchases and installations;• the timing of when control of uninstalled materials transfers to the customer;• fluctuations in our service costs;• weaker than anticipated demand for our energy storage systems due to changes in government regulation,incentives and policies;• weaker than anticipated demand for our energy storage systems due to our customers' inability to finance their projects;• interruptions in our supply chain;• the timing and level of additional purchases by existing customers;• unanticipated expenses incurred due to changes in governmental regulations,permitting requirements by local authorities at particular sites,utility requirements and environmental,health and safety requirements;• disruptions in our sales,production,service or other business activities resulting from our inability to attract and retain qualified personnel;• shortage of raw materials from our suppliers and associated price increases due to fluctuations in commodities prices;and • availability of spare parts from our suppliers. **Finally** ~~In addition~~ ,our revenue,key operating metrics **,** and other operating results in future quarters may fall short of the expectations of investors and financial analysts,which could have an adverse effect on the price of our common stock.Our backlog represents the amount of revenue we expect to realize in the future on uncompleted construction contracts,including new contracts under which work has not yet begun,as well as the remaining revenue to be recognized under the Company' s intellectual property licensing agreements.As of December 31, ~~2022~~ **2023** ,backlog totaled $ ~~331~~ **144** . ~~0~~ **2** million.Our bookings represents ~~the total MWhs to be delivered and~~ the aggregate contracted value for energy storage systems,tolling arrangements,and license and service agreements signed.The aggregate contracted value excludes any potential future variable payments or royalties.For the year ended December 31, ~~2022~~ **2023** ,bookings totaled $ ~~540~~ **205** . ~~1~~ **8** million.There can be no assurance that our backlog and bookings will result in actual revenue in the future in any particular period.This is because the actual receipt,timing,and amount of revenue under contracts included under backlog and bookings are subject to various contingencies,many of which are beyond our control.Our failure to realizing revenue from contracts included in the total amounts estimated under backlog and bookings could have a material adverse impact on our business,financial condition and results of operations **.In addition,our contracts with customers are subject to cancellation** . Generally, a customer can cancel an order prior to installation, and, notwithstanding the fact that a customer' s termination for convenience will obligate the customer to pay us certain fees, we may be unable to recover some of our costs in connection with design, permitting, installation **,** and site preparations incurred prior to cancellation. Cancellation rates in our industry could increase in any given period, due to factors outside of our control including an inability to install an energy storage system at the customer' s chosen location because of permitting or other regulatory issues, unanticipated changes in the cost or availability of alternative sources of electricity available to the customer, or other reasons unique to each customer. Our operating expenses are based on anticipated sales levels, and certain of our expenses are fixed. If we are unsuccessful in closing sales after expending significant resources or if we experience delays or cancellations, our business could be materially and adversely affected. Moreover, our customers typically expend significant...... financial condition and results of operations. Our ability to use net operating losses and other tax attributes to offset future taxable income may be subject to certain limitations. As of December 31, ~~2022~~ **2023** , we had approximately $ ~~3~~ **55** . ~~4~~ **2** million, $ ~~21~~ **38** . ~~9~~ **6** million, and $ ~~37~~ **79** . ~~3~~ **1** million of federal, state and foreign net operating loss (" NOL ") carryforwards, respectively, that will generally carry forward to offset future taxable income (if any), until such NOLs expire (if at all). The federal ~~and~~ **NOL carryforwards do not expire, but are subject to limitation on their use equal to 80 % of the taxable income in the year of use. The** state **NOL** ~~net operating loss~~ carryforwards will begin to expire, if unutilized, beginning in ~~2038~~ **2039** . The foreign NOL carryforwards will begin to expire, if unutilized, beginning in 2025. Additionally, as of December 31, ~~2022~~ **2023** , the Company had federal and state research tax credit carryforwards of and $ **2.** 0 ~~. 3~~ million and $ 0. ~~3~~ **6** million, respectively. The federal research tax credit carryforwards will begin to expire, if unutilized, in ~~2041~~ **2042** . The state tax research credits do not expire ~~. Federal NOLs generated in taxable years ending after December 31, 2017, may be carried forward indefinitely, but the deductibility of such federal NOLs may be limited to 80 % of our taxable income annually for tax years beginning after December 31, 2020~~ . Our NOL carryforwards are subject to review and possible adjustment by the applicable tax authorities. In addition, in general, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the " Code "), if a corporation undergoes an " ownership change, " generally defined as a cumulative change of more than 50 percentage points (by value) in its equity ownership by certain stockholders over a three- year period, the corporation' s ability to use its pre- change NOL carryforwards and other pre- change tax attributes (such as research and development tax credits) to offset its post- change income or taxes may be limited. We may experience ownership changes in the future as a result of subsequent changes in our stock ownership, some of which are outside our control. Similar provisions of state and foreign tax law may apply and future regulatory changes could also limit our ability to utilize NOL carryforwards **. Accordingly, we may not be able to utilize a material portion of our NOL carryforwards** to offset future taxable income. Changes in tax laws and regulations may have a material adverse effect on our business, financial condition, and result of operations. New income, sales, use, or other tax laws, statutes, rules, regulations, or ordinances could be enacted at any time, which could affect the tax treatment of any of our future U. S. and non- U. S. earnings. Further, existing tax laws, statutes, rules, regulations, or ordinances could be interpreted, changed, modified, or applied adversely to us. Generally, future changes in applicable U. S. and non- U. S. tax laws and regulations, or their interpretation and application, potentially with retroactive effect, could have an adverse effect on our business, financial conditions, and results of operations. We are unable to predict whether such changes will occur and, if so, the ultimate impact on our business. We may be required to take write- downs or write- offs, restructuring and impairment or other charges that could have a significant negative effect on our financial condition, results of operations and stock price, which could cause you to lose some or all of your investment. Unexpected risks may arise that cause us to write down or write off assets, restructure our operations, or incur impairment or other charges that could result in losses. Even though these charges may be noncash items and not have an immediate impact on our liquidity, the fact that we report charges of this nature could contribute to negative market perceptions about us or our securities. In addition, charges of this nature may cause us to violate net worth or other covenants to which we may be subject. Accordingly, our stockholders could suffer a reduction in the value of their shares. Incorrect estimates or assumptions by management in connection with the preparation of our consolidated financial statements could adversely affect our reported assets, liabilities, income, revenue or expenses. The preparation of our consolidated financial statements requires management to make critical accounting estimates and assumptions that affect the reported amounts of assets, liabilities, income, revenues or expenses during the reporting periods. Incorrect estimates and assumptions by management could adversely affect our reported amounts of assets, liabilities, income, revenues and expenses during the reporting periods. If we make incorrect assumptions or estimates, our reported financial results may be over- or understated, which could materially and adversely affect our business, financial condition and results of operations. Risks Related to Our Intellectual Property and Technology We may be unable to protect, defend, maintain or enforce intellectual property rights on which our business depends, including as against existing or future competitors, which may adversely affect our growth and success. We rely ~~primarily~~ on **a combination of** patent **, trademark** , copyright, trade secret and ~~trademark~~ **unfair competition** laws, **as well as** ~~and non- disclosure,~~ confidentiality ~~,~~ and other ~~types of~~ contractual ~~restrictions~~ **provisions with our customers, suppliers, employees, and others** to establish, maintain, and enforce our intellectual property and proprietary rights. However, our rights under these laws and agreements afford us only limited protection and the actions we take to establish, maintain, and enforce our intellectual property rights may not be adequate. For example, ~~certain of our engineers reside in California and it is not legally permissible to prevent them from working for a competitor. In addition, our trade secrets and other confidential information could be disclosed in an unauthorized manner to~~

~~third parties,~~ our owned or licensed intellectual property rights could be challenged, invalidated, **or** circumvented, **and we may be unable to detect when our intellectual property rights are** infringed ~~,~~ or misappropriated **. Additionally, we may be unable to effectively assert our intellectual property rights** or our intellectual property rights may not be sufficient to provide us with a competitive advantage, any of which could have a material adverse effect on our business, financial condition or operating results. The laws of some countries do not protect intellectual property rights as fully as do the laws of the United States. Therefore, our intellectual property rights may not be as strong or as easily enforced outside of the United States and efforts to protect against the unauthorized use of our intellectual property rights, technology and other proprietary rights may be more expensive and difficult outside of the United States. Further, we have not established our intellectual property rights in all countries in the world, and competitors may copy our designs and technology and operate in countries in which we have not prosecuted out intellectual property. Failure to adequately protect our intellectual property rights could result in our competitors using our intellectual property to offer products, and competitors' ability to design around our intellectual property would enable competitors to offer similar or better batteries, in each case potentially resulting in the loss of some of our competitive advantage and a decrease in our revenue, which would adversely affect our business, prospects, financial condition and operating results. Our patents and patent applications, if issued, may not provide adequate protection to create a barrier to entry. The provisional and non- provisional patent applications that we own may not issue as patents or provide adequate protection to create a barrier to entry, which may hinder our ability to prevent competitors from selling products similar to ours. We cannot be certain that our pending patent applications will result in issued patents or that any of our issued patents will afford protection against a competitor. The status of patents involves complex legal and factual questions, and the breadth of claims allowed is uncertain. As a result, we cannot be certain that the patent applications that we file will result in patents being issued or that our patents and any patents that may be issued to us in the future will afford **sufficient** protection against competitors with similar technology. In addition, patent applications filed in foreign countries are subject to laws, rules, and procedures that differ from those of the United States, and thus we cannot be certain that foreign patent **applications** related to issued U. S. patents will be issued in other regions. Furthermore, even if these patent applications are accepted and the associated patents are issued, some foreign countries provide significantly less effective patent enforcement than in the United States. We intend to continue to regularly assess opportunities for seeking patent and other intellectual property protections for certain aspects of our technology, designs and methodologies that we believe provide a meaningful competitive advantage. However, our ability to do so may be limited until such time as we are able to generate **sufficient** cash flow from operations or otherwise raise sufficient capital to continue to invest in our intellectual property. For example, maintaining patents in the United States and other countries requires the payment of maintenance fees, which may result in loss of our patent rights if we are unable to pay. If we are unable to so invest in our intellectual property, our ability to protect it or prevent others from infringing on our proprietary rights may be impaired. In addition, patents issued to us may be infringed upon or designed around by others and others may obtain patents that we need to license or design around, either of which ~~would~~ **could** increase **our** costs and may adversely affect our business, our prospects, and our operating results. We may be subject to third- party claims of infringement, misappropriation or other violation of intellectual property rights, or other claims challenging our agreements related to intellectual property, which may be time- consuming and costly to defend, and could result in substantial liability. Companies, organizations, or individuals, including our competitors, ~~may~~ hold **numerous** ~~or obtain~~ patents ~~, trademarks,~~ or other intellectual property rights ~~that~~ **related to technology used in our industry, some of which** may prevent, limit, or interfere with our ability to make, use, develop, or sell our products or services, which could make it more difficult for us to operate our business. ~~These~~ **Those** ~~companies~~ holding intellectual property rights allegedly relating to our products or services could, in the future, make claims or bring suits alleging infringement, misappropriation, or other violations of such rights, or otherwise assert their rights by seeking royalties or injunctions **, which may become more likely if we gain greater recognition in the market** . If a claim is successfully brought in the future and we or our products or services are determined to have infringed, misappropriated, or otherwise violated a third party' s intellectual property rights, we may be required to do one or more of the following: • cease selling or using our products or services that incorporate the challenged intellectual property; • pay substantial damages (including treble damages and attorneys' fees if our infringement is determined to be willful); • obtain a license from the holder of the relevant intellectual property rights, which may not be available on reasonable terms or at all; or • redesign our products, services, or means of production, which may not be possible or cost- effective. Any of the foregoing could adversely affect our business, prospects, operating results, and financial condition. In addition, any litigation or claims, whether or not valid, could harm our reputation, result in substantial costs and divert resources and management attention. We also license technology from third parties and incorporate components supplied by third parties into our products. We may in the future face claims that our use of such technology or components infringes or otherwise violates the rights of others, which would subject us to the risks described above. We may in some cases seek indemnification from our licensors or suppliers under our contracts with them, but our rights to indemnification or our suppliers' resources may be unavailable or insufficient to cover our costs and losses. We may be subject to claims that our employees, consultants, or advisors have wrongfully used or disclosed proprietary information or know- how of their current or former employers or claims asserting ownership of what we regard as our own intellectual property rights. Many of our employees, consultants, and advisors are currently or were previously employed or engaged at other companies in our field, including our competitors or potential competitors. Although we try to ensure that our employees, consultants, and advisors do not use the proprietary information or know- how of others in their work for us, we may be subject to claims that we or these individuals have used or disclosed intellectual property rights, including trade secrets or other proprietary information, of any such individual' s current or former employer. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management. In addition, while it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property rights to execute agreements assigning such intellectual property rights to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property rights that we regard as our own. Additionally, the assignment of intellectual property rights may not be self- executing, or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property rights. Any of the foregoing could harm our competitive position, business, financial condition, results of operations, and prospects. We utilize open- source software, which may pose particular risks to our proprietary software and solutions. We use open- source software in our solutions and will use open- source software in the future. Companies that incorporate open- source software into their solutions have, from time to time, faced claims challenging the use of open- source software and compliance with open- source license terms. Some licenses governing the use of open- source software contain requirements that we make available source code for modifications or derivative works we create based upon the open- source software, and that we license such modifications or derivative works under the terms of a particular open- source license or other license granting third parties certain rights of further use. By the terms of certain open- source licenses, we could be required to release the source code of our proprietary software, and to make our proprietary software available **to others** under open- source licenses ~~to third parties at no cost, if we combine or distribute our~~ - **or other unfavorable license terms** ~~proprietary software with open- source software in certain manners~~ . Although we monitor our use of open- source software, we cannot assure you that all open- source software is reviewed prior to use in our solutions, that our developers have not incorporated open- source software into our solutions, or that they will not do so in the future. Additionally, the terms of many open- source licenses to which we are subject have not been interpreted by U. S. or foreign courts. There is a risk that open- source software licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to market or provide our solutions as currently marketed or provided. Companies that incorporate open- source software into their products have, in the past, faced claims seeking enforcement of open- source license provisions and claims asserting ownership of open- source software incorporated into their product. If an author or other third party ~~that distributes such open- source software~~ were to allege that we had not complied with the conditions of an open- source license, we could incur significant legal costs defending ourselves against such allegations. In the event such claims were successful, we could be subject to significant damages or be enjoined from the distribution of our software. ~~In addition, the terms of open- source software licenses may require us to provide source code that we develop using such open- source software to others on unfavorable license terms.~~ As a result of our current or future use of open- source software, we may face claims or litigation, be required to release our proprietary source code, pay damages for breach of contract, re- engineer our solutions, discontinue making our solutions available in the event re- engineering cannot be accomplished on a timely basis, or take other remedial action. Any such re- engineering or other remedial efforts could require significant additional research and development resources, and we may not be able to successfully complete any such re- engineering or other remedial efforts. Further, in addition to risks related to license requirements, use of certain open- source software can lead to greater risks than use of third- party commercial software, as open- source licensors generally do not provide warranties or controls on the origin of software. Any of these risks could be difficult to eliminate or manage, and, if not addressed, could have a negative effect on our business, financial condition, and results of operations. **Cyberattacks** ~~Cyber- attacks~~ and other security breaches **affecting, or significant interruptions to, information technology systems on which we rely** could have an adverse effect on our business, **operations and financial condition, including through** harm **to** our reputation and ~~expose~~ **exposure** ~~us~~ to liability. **In the ordinary course of our business, we collect, store, and transmit confidential information, including intellectual property, proprietary business information, and personal information of customers, our employees, and contractors (collectively, " Confidential Information "). We also rely on** ~~Computer~~ **computer systems, hardware, software, technology infrastructure, and online sites and networks for both internal and external operations that are critical to our business and the operation of our energy storage systems (collectively, " IT Systems "). We own and manage some of these IT Systems but also rely on third parties for a range of IT Systems and related products and services. We face numerous and evolving cybersecurity risks that threaten the confidentiality, integrity, and availability of our IT Systems and Confidential Information, including computer** malware ~~,~~ **and** viruses **(e. g., ransomware), malicious code, misconfigurations, bugs or other vulnerabilities** , physical or electronic break- ins **, cyberattacks, phishing attacks and other social engineering schemes, employee theft or misuse, human error, fraud, denial or degradation of service attacks and attacks by sophisticated nation- state and nation- state- supported actors, terrorism, war, infrastructure changes and capacity constraints, telecommunication and electrical failures,** and similar **attacks or** disruptions **. Any of these** could lead to interruption and delays in our services and operations and **the** loss, misuse or theft of **Confidential Information** ~~data or other intellectual property~~ . **Such** ~~Computer malware, viruses, ransomware, hacking and phishing~~ attacks against online networks have become more prevalent and ~~may occur on our systems in the future. Due to the political uncertainty involving Russia and Ukraine,~~ there is an increased likelihood ~~that escalation of tensions could result in cyber- attacks or cybersecurity incidents that could either directly or indirectly impact our operations. Any attempts by cyber attackers to disrupt our services or systems, if successful, could harm our business, introduce liability to data subjects, result in the~~ **they** ~~misappropriation of funds~~ **may occur on** ~~or~~ **our IT** ~~other intellectual property, be expensive to remedy and damage our reputation or brand. Insurance may not be sufficient to cover significant expenses and losses related to cyber- attacks. Efforts to prevent cyber attackers from entering computer systems~~ **Systems** ~~are expensive to implement, and we may not be able to cause the implementation or enforcement of such preventions with respect to our~~ - **or those of** ~~third- party vendors. Though it is difficult to determine what, if any, harm may directly result from any specific interruption or~~ **our** ~~attack, any failure to maintain performance, reliability, security and availability of systems and technical infrastructure may, in addition to other losses, harm our reputation, brand and ability to attract customers. We may in the future experience, service disruptions, outages and other performance problems due to a variety of factors, including infrastructure changes,~~ third- party service providers **in**

the future. Furthermore , ~~human~~ **because the techniques used to obtain unauthorized access to, or to sabotage, systems change frequently and often are not recognized until launched against a target, we may be unable to anticipate these techniques or implement adequate preventative measures. We may also experience security breaches that may remain undetected** ~~or~~ **for** ~~software errors and~~ - **an** ~~capacity constraints~~ **extended period. Even if identified, we may be unable to adequately investigate or remediate incidents or breaches due to attackers increasingly using tools and techniques — including artificial intelligence — that are designed to circumvent controls, to avoid detection, and to remove or obfuscate forensic evidence. Due to the political uncertainty involving Russia and Ukraine, there is an increased likelihood of an escalation of tensions that could result in cyberattacks or cybersecurity incidents that may either directly or indirectly impact our operations. We and certain of our service providers are from time to time subject to cyberattacks and security incidents. While we do not believe that we have experienced any significant system failure, accident or security breach to date, any successful attempt by cyberattackers or other disruption to our services or IT Systems, could harm our business, result in regulatory investigations and enforcement actions, expose us to legal liability, cause us to incur material costs, including to provide required notifications to third- parties including data subjects, result in the misappropriation of funds or other intellectual property, be expensive to investigate and remedy and damage our reputation or brand and ability to attract and retain customers. Insurance may not be sufficient to cover significant expenses and losses related to cyberattacks or other interruptions to our systems. Efforts to prevent cyberattackers from entering IT Systems are expensive to implement, and there can be no assurance that our cybersecurity risk management program and processes, including our policies, controls or procedures, will be fully implemented, complied with or effective in protecting our IT Systems and Confidential Information, and we may not be able to ensure the implementation or enforcement of the same with respect to our third- party vendors** . We continue to implement processes and procedures designed to enable us to quickly recover from a disaster or catastrophe and continue business operations. We have tested this capability under controlled circumstances, however, there are several factors ranging from human error to data corruption that could materially impact the efficacy of such processes and procedures, including by lengthening the time services are partially or fully unavailable to customers and users. It may be difficult or impossible to perform some or all recovery steps and continue normal business operations due to the nature of a particular **cyber incident,** disaster or catastrophe, especially during peak periods, which could cause additional reputational ~~damages~~ - **damage** , or loss of revenues, any of which could adversely affect our business **, results of operations,** and financial results **. In addition, we have experienced rapid growth and may continue to grow in the future. In the event of such growth, our IT Systems may not be adequate, as currently designed, to protect us from data security breaches and other disruptions** . In the future our energy storage systems and any digital platform that we develop may experience outages and other performance problems due to a variety of factors, including infrastructure changes, third- party service providers, human or software errors and capacity constraints. We may also face changes in our energy storage systems, which could lead to damages, accidents and or system disruptions. We may in the future experience blackmail for our proprietary software or any software underpinning any digital platform that we may develop, which could shut down operation of our **IT** ~~systems~~ **Systems** , those of our potential customers, or cause other damage to such systems ~~. Any significant disruption in our computer systems, some of which will be hosted by third- party providers, could damage our reputation and result in negative publicity, which would harm our business and results of operations. Although the computer systems for our energy storage systems will strictly be on- premise, we utilize third- party web services for administrative purposes and as a backup for our customers in case there is an on- site system failure. Interruptions, whether due to system failures, human errors, computer viruses, physical or electronic break- ins, denial- of- service attacks, and capacity limitations, could delay or inhibit our operations. Problems, whether real or perceived, with the reliability or security of our systems could prevent us from earning revenue and could harm our reputation. Damage to our reputation, any resulting loss of user confidence and the cost of remedying these problems could negatively affect our business, results of operations, financial condition, and prospects~~ . We have service agreements with data center providers **and other** ~~. Problems with our~~ third- party service providers ~~or with~~ **, and interruptions to their services,** their network providers or with the systems allocating capacity among their users, including us, could adversely affect our ability to serve our customers or perform our administrative work. Our third- party service providers could decide to close their facilities without adequate notice. Any financial difficulties, such as bankruptcy or reorganization, faced by our third- party service providers or any of the service providers with whom they contract may have negative effects on our business, the nature and extent of which are difficult to predict. If our third- party service providers are unable to keep up with our needs for capacity, this could have an adverse effect on our business. In the event that our agreements with any of our third- party service providers ~~is~~ **are** terminated, or we add additional cloud infrastructure service providers, we may experience significant costs or downtime in connection with the transfer to, or the addition of, new cloud infrastructure service providers. Any of the above circumstances or events may harm our reputation and brand or increase our costs, **and** ~~any of which could~~ adversely affect our business, financial condition, and results of operations. ~~To date, we~~ **Our systems include complex software and technology systems and do not** have ~~built~~ **a meaningful history of operation, and** ~~the~~ **there** ~~CDU~~ **can be no assurance such systems and technology will perform as expected or that software** , ~~but have~~ **engineering or other technical defects will** not ~~yet deployed any fully operational~~ **be discovered until after a system is installed and operated by a customer. If our** energy storage systems **contain engineering** ~~. Once commercial production commences or our~~ - **or construction defects, our business and financial results could be harmed. In addition, the development and updating of these** systems **will require** ~~are installed and put into use~~ - **us** ~~by customers~~ **to incur potentially significant costs and expenses. To date** , ~~our~~ **we have deployed two fully operational BESSs. Our** products may contain defects in design, ~~manufacture~~ **engineering,** or construction that may cause them not to perform as expected or may require repair. An EVx system is unique proprietary technology to Energy Vault, and because one has not yet been fully constructed or deployed, we currently have no frame of reference by which to evaluate the performance of our EVx systems. Additionally, our energy storage systems ~~will~~ use a substantial amount of software to operate which may require modification and updates over the life of such systems. Software products are inherently complex and often contain defects and errors when first introduced. These defects and errors can manifest in any number of ways in our products, including through diminished performance, security vulnerabilities, malfunctions, or even permanently disabled products. Additionally, it is difficult for us to evaluate the manufacturing and construction of our energy storage systems until there are working examples that have been manufactured, constructed, and used by us and / or our customers. There can be no assurance that we will be able to detect and fix any defects in the hardware or software of our energy storage systems, and such defects may not become apparent until a system is installed and operated by a customer. Our energy storage systems may not perform consistent with customers' expectations or consistent with other energy storage systems which may become available. Any product defects or any other failure of our energy storage systems to perform as expected could harm our reputation and result in negative publicity, lost revenue, delivery delays, product liability claims and significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects. Any defects, errors, or other vulnerabilities discovered in our software after release could allow third parties to manipulate or exploit our software, lower revenue, and expose us to claims for damages, any of which could seriously harm our business. We also could face claims for product liability, tort, or breach of warranty. Defending a lawsuit, regardless of its merit, is costly and may divert management' s attention and seriously harm our reputation and our business. In addition, further development and updating of our energy storage systems will require us to incur potentially significant costs and expenses. Any failure to offer high- quality technical support services may adversely affect our relationships with our customers and adversely affect our financial results. **We** ~~As we complete our initial energy storage projects, we~~ anticipate that our customers will depend on our support organization to resolve any technical issues relating to the hardware and software included in our systems. In addition, our sales process is likely to depend highly on the quality of our hardware and software- enabled services, on our business reputation, and on strong recommendations from our existing customers. Any failure to maintain high- quality and highly- responsive technical support, or a market perception that we do not maintain high- quality and highly- responsive support, could adversely affect our reputation, our ability to sell our products to existing and prospective customers, and our business, financial condition and results of operations. We intend to offer technical support services alongside our systems. While we have a designated team of engineers to support our customers, they may be unable to respond quickly enough to accommodate short- term increases in demand for support services, particularly as we increase the size of our customer base. We also may be unable to modify the format of our support services to compete with changes in support services provided by competitors. At our current stage, it is difficult to predict demand for technical support services and if demand were to increase significantly beyond our expectations, we may be unable to provide satisfactory support services to our customers. Additionally, increased demand for these services, without corresponding revenue, could increase costs and adversely affect our business, financial condition and results of operations. Our energy storage systems are complex and incorporate technology and components that may contain design and manufacturing- related defects and errors and may in the future contain undetected defects or errors. Additionally, we have limited experience from which to evaluate the long- term performance of our energy storage systems ~~since we have not yet deployed any fully operational systems, except for the CDU~~ . There can be no assurance that we will be able to detect and fix any defects in any of our energy storage system systems prior to the sale to potential consumers. Generally, we do not manufacture the components of our energy storage systems and we rely on suppliers and subcontractors to manufacture such components. We provide installation, construction, and commissioning services for our customers that purchase our products. Although we have implemented quality control initiatives to help prevent defects and issues, defects and issues may still occur in the future that may result in significant expenses or disruptions of our operations. Since we do not manufacture certain components of our energy storage systems, our ability to seek recourse for liabilities and recover costs from our suppliers and subcontractors depends on our contractual rights as well as the financial condition and integrity of such suppliers and subcontractors. Furthermore, our suppliers and subcontractors may be unable or not required to correct manufacturing defects or other failures of such components of our energy storage systems in a manner satisfactory to our customers, which could adversely affect customer satisfaction, market acceptance, and our business reputation. For example in a GESS system, mobile masses may fall or the system may otherwise fail to perform as expected. For BESSs, on rare occasions, lithium- ion batteries can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium- ion batteries. Any defective performance could subject us to lawsuits, product recalls, or redesign efforts, all of which would be time consuming and expensive. Additionally, negative public perception regarding the suitability of the components in our energy applications could adversely affect our business and reputation. Any defects or errors in product or services offerings, or the perception of such defects or errors, or other performance problems could result in any of the following, each of which could adversely affect our business, financial condition, and results of operations: • expenditure of significant financial and product development resources, including recalls, in efforts to analyze, correct, eliminate, or work around errors or defects; • significant re- engineering work; • loss of existing or potential customers or partners; • interruptions or delays in sales; • delayed or lost revenue; • delay or failure to attain market acceptance; • delay in the development or release of new functionality or improvements; • negative publicity and reputational harm; • sales credits or refunds; • security vulnerabilities, data breaches, and exposure of confidential or proprietary information; • diversion of development and customer service resources; • breach of warranty claims; • legal claims and regulatory actions under applicable laws, rules, and regulations; and • the expense and risk of litigation. Risks Related to Government Regulation Our future financial performance may depend on the continued availability of rebates, tax credits and other financial incentives. The reduction, modification, or elimination of government economic incentives could cause our revenue to decline and harm our financial results. U. S. federal, state, local and foreign governments provide incentives to end users in the form of rebates, tax credits, and other financial incentives, such as system performance payments and payments for renewable energy credits associated with renewable energy generation. The range and duration of these incentives varies widely by jurisdiction. Our business may rely on these governmental rebates, tax credits, and other financial incentives to significantly lower the effective price of our energy storage systems for our customers. However, these incentives may expire on a particular date, end when the allocated funding is exhausted, or be reduced or terminated as a matter of regulatory or legislative policy. These reductions or terminations may occur without warning. The reduction, elimination, or expiration of such incentives therefore could harm our business and cash flows. In August 2022, the United States passed the IRA, which includes a number of government incentives that support the adoption of energy storage products and services and are anticipated to benefit the Company and its operations. Forthcoming **additional** guidance to implement the IRA from the U. S. Department of Treasury and other federal administrative agencies could be drafted in such manner that would not be as anticipated and may be adverse to the Company' s interests. We could be liable for environmental ~~damage~~ **, health, and safety (" EHS ") issues** resulting from our operations, which could impact our reputation, our business, and our operating results. We are subject to **EHS** ~~environmental, health, and safety~~ laws and regulations in jurisdictions in which we operate, including those governing **worker safety and the** disposal of hazardous materials and wastes. ~~Environmental~~ **EHS laws also cover other topics, such as emissions to air, water (including groundwater), and soil, noise, and impacts to natural resources, including various wildlife species, or areas, any of which we may be or become subject to in connection with our operations and projects. EHS** laws and regulations can be complex and often change. These laws can give rise to strict, joint and several liability for administrative oversight costs, cleanup costs, property damage, bodily injury, fines, and penalties. Capital and operating expenses needed to comply with ~~environmental~~ **EHS** laws and regulations can be significant, and violations may result in substantial fines and penalties or third- party damages. Our operations involve the use of hazardous, flammable, and explosive materials in our battery and green hydrogen storage solutions. Our operations also produce hazardous wastes. We cannot eliminate the risk of contamination or injury from the generation, transportation, or disposal of such materials. In the event of contamination or injury resulting from our or our third **-** party manufacturers' use of, or associated with the transportation or disposal of, hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources. We also could incur significant costs associated with civil or criminal fines and penalties. We maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from exposure to hazardous materials with a policy limit that we believe is customary for similarly situated companies and adequate to provide us with insurance coverage for foreseeable risks; however, this insurance may not provide adequate coverage against potential liabilities **and not all workers have or may agree to our workers' compensation policy** . We do not maintain insurance for environmental liability or toxic tort claims that may be asserted against us in connection with our storage or disposal **of** hazardous materials. In addition, maintaining compliance with applicable ~~environmental~~ **EHS** laws requires significant time and management resources and could cause delays in our ability to build out, equip and operate our facilities as well as service our ~~fleet~~ **installed energy storage systems** , which would adversely impact our business, our prospects, our financial condition, and our operating results. In addition, ~~environmental~~ **EHS** laws and regulations such as the Comprehensive Environmental Response, Compensation and Liability Act in the United States impose liability on several grounds including for the investigation and cleanup of contaminated soil and ground water, for building contamination, for impacts to human health and for damages to natural resources. ~~If~~ **We could incur liability under EHS laws and regulations if** contamination is discovered in the future at properties formerly ~~owned or operated by us~~ or currently owned **, leased** or operated by us, or properties to which hazardous substances were sent by us, ~~it could result in us incurring liability under environmental laws and regulations~~ . As noted above, such liability can be strict, joint and several **. We are subject to various occupational health and safety laws which may require us to incur additional costs, disrupt operations, or otherwise adversely impact our business** . Many of our customers who have agreed to purchase our energy storage systems have high ~~sustainability~~ standards, and any ~~environmental~~ **EHS** noncompliance by us could harm our reputation and impact a current or potential customer' s buying decision. Additionally, in many cases we contractually commit to performing all necessary installation work on a fixed- price basis, and unanticipated costs associated with environmental remediation **, worker safety,** and / or **EHS** compliance expenses may cause the cost of performing such work to exceed our revenue. The costs of complying with ~~environmental~~ **EHS** laws, regulations, and customer requirements, and any claims concerning noncompliance or liability with respect to contamination in the future, could have a material adverse effect on our financial condition or our operating results. Action by governmental authorities and local residents to restrict construction or use of our systems **or the projects / facilities that rely on our systems** in their localities could substantially harm our business and financial results. In the United States and elsewhere, the construction and implementation of our systems is subject to local laws, regulations, rules and agreements regarding zoning, permitting and land use. From time to time, various interest groups lobby for or against amendments to such rules that would allow potential customers to implement our systems in locations desirable to them. In certain cases, potential customers may need to petition for changes or waivers to such rules in order to be allowed to implement our systems. In all cases, governmental authorities and local residents may oppose the implementation of our systems by our potential customers, which could cause delays, potential damage to our relationships with customers and increased costs to us and our customers. If laws, regulations, rules, or agreements significantly restrict or discourage our potential customers in certain jurisdictions from purchasing and implementing **our systems, or such customers from constructing the projects / facilities that will utilize** our systems, it would have a material adverse effect on our business, results of operations, and financial condition. In addition, ~~there can be no assurance that~~ future macroeconomic pressures and public policy concerns could continue to lead to new laws and regulations, or interpretations of existing laws and regulations, that ~~would~~ **could** limit our future customers' use of our systems. **Any actual or perceived failure to comply with** ~~Laws~~ **laws** , regulations and rules relating to privacy, information security, and data protection could **subject us to liability, damage our reputation,** increase our costs and **otherwise** adversely affect our business opportunities **, results of operations and financial condition** . In addition, the ongoing costs of complying with such laws, regulations and rules could be significant. We are **and may become** subject to various **state,**

federal and foreign laws regarding privacy, information security and data protection. In particular, our handling of data relating to individuals is subject to a variety of laws and regulations relating to privacy, data protection, and information security, and ~~it~~ **we** may become subject to additional obligations, including contractual obligations, relating to our maintenance and other processing of this data. For example, the European Union' s General Data Protection Regulation, ~~or GDPR,~~ imposes stringent **requirements for processing the personal** data ~~protection requirements~~ **of individuals within the European Economic Area (" EEA ") or in the context of our activities within the EEA** and provides for significant penalties **, among other things,** for noncompliance **. In the U. S., certain states have adopted privacy and security laws and regulations, which govern the privacy, processing and protection of personal information. For example, the California Consumer Privacy Act, as amended by the California Privacy Rights Act, creates individual privacy rights for California individuals (including employees), increases the privacy and security obligations of entities handling certain personal information, and creates a new California data protection agency authorized to issue substantive regulations which could result in increased privacy and information security enforcement** . Laws, regulations, and other actual and potential obligations relating to privacy, data protection, and data security are evolving rapidly, and the regulatory landscape regarding privacy, data protection, and data security is likely to remain uncertain for the foreseeable future. We expect to be subject to new laws and regulations, or new interpretations of laws and regulations, in the future in various jurisdictions. These laws, regulations, and other obligations, and changes in their interpretation, could require us to modify our operations and practices, restrict our activities, and increase our costs in the future, and it is possible that these laws, regulations, and other obligations may be inconsistent with one another or be interpreted or asserted to be inconsistent with our business or practices. Any **actual or perceived** inability to adequately address privacy and security concerns or comply with applicable privacy and information security laws, rules and regulations **, our internal policies and procedures, or our contracts governing our processing of personal information, could result in negative publicity, government investigations and enforcement actions, claims by third parties and damage to our reputation, any of which** could have an adverse effect on our business, prospects, results of operations, financial position and reputation. We are subject to anti- bribery, anti- corruption, including the U. S. Foreign Corrupt Practices Act, as well as export control laws, customs laws, sanctions laws and other laws governing our operations. If we fail to comply with these laws, we could be subject to civil or criminal penalties, other remedial measures and legal expenses, any of which would adversely affect our business, financial condition and results of operations. We are subject to anti- corruption, anti- bribery, and other similar laws and regulations in various jurisdictions in which we operate, including the U. S. Foreign Corrupt Practices Act (" FCPA "), and other anti- corruption laws and regulations. These laws generally prohibit us and our officers, directors, employees and business partners acting on our behalf, including agents, from corruptly offering, promising, authorizing or providing anything of value to obtain or retain business or otherwise obtain favorable treatment and require companies to maintain accurate books and records and a system of internal controls or adequate procedures to prevent bribery. We are also subject to economic sanctions laws, export control laws and regulations, as well as customs regulations, in the various jurisdictions in which we operate, including those administered and enforced by the U. S. Department of Treasury' s Office of Foreign Assets Control, the U. S. Department of State, the U. S. Department of Commerce, His Majesty' s Treasury of the United Kingdom, the United Nations Security Council, the European Union (and its member states) and other relevant sanctions authorities. We have implemented and maintain policies and procedures designed to promote compliance by us and our directors, officers, employees, representatives, consultants and agents with the FCPA, the Bribery Act and other anti- corruption laws, as well as economic sanctions and export controls. We cannot assure you, however, that any such policies and procedures will be sufficient or that directors, officers, employees, representatives, consultants and agents have not engaged, and will not engage, in conduct for which we may be held responsible, nor can we assure you that our business partners have not engaged, and will not engage, in conduct that could materially affect their ability to perform their contractual obligations to us or result in our being held liable for such conduct. Violations of the FCPA, Bribery Act, other anti- corruption laws, economic sanctions, export control laws and / or anti- money laundering and anti- terrorism laws or regulations may result in severe criminal or civil sanctions, and we may be subject to other liabilities, **as well as damage to our business continuity or brand,** which could have a material adverse effect on our business, financial condition and results of operations. Changes in regulatory enforcement policies and priorities may negatively impact the management of our business, results of operations, and ability to compete. Energy and ~~environmental~~ **EHS** regulation is constantly changing, and **changes in** policy ~~or~~ **,** changes in **interpretation or** enforcement of existing laws or regulations applicable to our business, or reexamination of current practices, could adversely impact our profitability, limit our ability to continue existing or pursue new business activities, require us to change certain of our business practices, affect retention of key personnel, or expose us to additional costs (including increased compliance costs and / or customer remediation). ~~These~~ **Regulatory** changes also may require us to invest significant resources, and devote significant management attention, to make any necessary changes and could adversely affect our business. ~~The Company' s Project Development Group conducts required environmental impact and sustainability studies prior to any storage project commitment.~~ We are subject to licensing **, permitting,** and operational requirements that result in substantial compliance costs, and our business would be adversely affected if we fail to obtain or maintain required licenses or if our licenses are impaired. Our business is subject to numerous federal, state, and local laws and regulations **in the jurisdictions in which we operate** . In particular, our business is subject to oversight and regulation under local ordinances, building, zoning and fire codes, **EHS** ~~environmental protection regulation~~ **regulations** , utility interconnection requirements, and other rules and regulations. Such licenses **, permits, and approvals** often require us to operate in ways that incur substantial compliance costs. ~~To date, we have not deployed any fully operational energy storage systems, other than the CDU.~~ We have obtained certain permits and are in the process of obtaining additional permits for the energy storage systems that we are constructing. Although we have obtained certain required permits and believe that obtaining and renewing any remaining ~~certificates~~ **permits** and / or licenses will be routine, we can provide no assurance that all required ~~certificates~~ **permits** and / or licenses will be obtained or renewed in a timely manner. Our failure to hold a given ~~license~~ **permit** or certificate would impair our ability to perform our obligations under our customer contracts. The number of laws affecting our business continues to grow. If our licenses or ~~certificates~~ **permits** were impaired, whether by expiration, nonrenewal ~~or~~ **,** modification **,** or termination, our business would be adversely impaired. We can give no assurances that we will properly and timely comply with all laws and regulations that may affect us. If we fail to comply with these laws and regulations, we may be subject to legal penalties, which would adversely affect our business, prospects, and results of operations. In addition, governments, often acting through state utility or public service commissions, change or adopt different rates for commercial customers on a regular basis. These changes could affect our ability to deliver cost savings to future customers for the purchase of our energy storage systems. Litigation, regulatory actions and compliance issues could subject us to significant fines, penalties, judgments, remediation costs, negative publicity and requirements resulting in increased expenses. We have been and continue to be involved in legal proceedings, administrative proceedings, claims and other litigation that arise in the ordinary course of business. In addition, since our energy storage system is a new type of product in a nascent market, we may in the future need to seek the amendment of existing regulations or, in some cases, the creation of new regulations, in order to operate our business in some jurisdictions. Such regulatory processes may require public hearings concerning our business, which could expose us to subsequent litigation. Unfavorable outcomes or developments relating to proceedings to which we are a party or transactions involving our products, such as judgments for monetary damages, injunctions, or denial or revocation of permits, could have a material adverse effect on our business, financial condition, and results of operations. To the extent such proceedings also generate negative publicity, our reputation and business could also be adversely affected. In addition, handling compliance issues and the settlement of claims could adversely affect our financial condition and results of operations. Government reviews, inquiries, investigations, and actions could harm our business or reputation. As we operate in various locations around the world, our operations in certain countries are subject to significant governmental scrutiny and may be adversely impacted by the results of such scrutiny. The regulatory environment with regard to our business is evolving, and officials often exercise broad discretion in deciding how to interpret and apply applicable regulations. From time to time, we receive formal and informal inquiries from various government regulatory authorities, as well as self- regulatory organizations, about our business and compliance with ~~local~~ laws, regulations or standards. Any determination that our operations or activities, or the activities of our employees, are not in compliance with existing laws, regulations or standards could result in the imposition of substantial fines ~~,~~ **; civil or criminal liability;** interruptions of business ~~,~~ **;** loss of supplier, vendor, customer or other third- party relationships ~~,~~ **;** termination of necessary licenses and permits ~~,~~ **;** or similar results ~~,~~ **;** all of which could potentially harm our business and / or reputation. Even if an inquiry does not result in these types of determinations, regulatory authorities could cause us to incur substantial costs or require us to change our business practices in a manner materially adverse to our business ~~,~~ and ~~it potentially~~ could create negative publicity **,** which could harm our business and / or reputation. Risks Related to Ownership of Energy Vault' s Securities Concentration of ownership among our executive officers, directors, and their affiliates may prevent new investors from influencing significant corporate decisions. As of December 31, ~~2022~~ **2023** , our executive officers, directors and their affiliates as a group beneficially own approximately ~~38~~ **30** . ~~4~~ **6** % of our outstanding common stock. As a result, these stockholders are able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, appointment and removal of officers, any amendment of the amended and restated certificate of incorporation and approval of mergers and other business combination transactions requiring stockholder approval. This control could have the effect of delaying or preventing a change of control or changes in management and will make the approval of certain transactions difficult or impossible without the support of these stockholders. The Company qualifies as an " emerging growth company " ~~and " smaller reporting company "~~ within the meaning of the Securities Act, and ~~we~~ **in reliance on SEC guidance,** ~~take~~ **takes** advantage of certain exemptions from disclosure requirements available to emerging growth companies, **as well as " smaller reporting companies, "** which could make our securities less attractive to investors and may make it more difficult to compare our performance to the performance of other public companies. We qualify as an " emerging growth company " as defined in Section 2 (a) (19) of the Securities Act, as modified by the JOBS Act. As such, the Company is eligible for and intends to take advantage of certain exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies for as long as it continues to be an emerging growth company, including (a) the exemption from the auditor attestation requirements with respect to internal control over financial reporting under Section 404 (b) of the Sarbanes- Oxley Act, (b) the exemptions from say- on- pay, say- on- frequency and say- on- golden parachute voting requirements and (c) reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements. The Company will remain an emerging growth company until the earliest of (i) the last day of the fiscal year in which the market value of our common stock that is held by non- affiliates exceeds $ 700 million as of June 30 of that fiscal year, (ii) the last day of the fiscal year in which we have total annual gross revenue of $ 1. ~~07~~ **235** billion or more during such fiscal year (as indexed for inflation), (iii) the date on which we have issued more than $ 1 billion in non- convertible debt in the prior three- year period or (iv) December 31, 2026. In addition, Section 107 of the JOBS Act also provides that an emerging growth company can take advantage of the exemption from complying with new or revised accounting standards provided in Section 7 (a) (2) (B) of the Securities Act as long as the Company is an emerging growth company. An emerging growth company can therefore delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected not to opt out of such extended transition period and, therefore, the Company may not be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. Even after the Company no longer qualifies as an emerging growth company, we may ~~still~~ **in the future** qualify as a " smaller reporting company, " which would allow it to continue to take advantage of many of the same exemptions from disclosure requirements, including not being required to comply with the auditor attestation requirements, Section 404 of the Sarbanes- Oxley Act and reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements. Moreover, smaller reporting companies may choose to present only the two most recent fiscal years of audited financial statements in their Annual Reports on Form 10- K **. Although the Company determined that it did not qualify as a " smaller reporting company " as of its 2023 determination date, in reliance on SEC guidance, it has chosen to continue to use certain of the scaled disclosures in this Annual Report on Form 10- K, and will begin providing non- scaled larger company disclosures in its first Form 10- Q for the 2024 fiscal year** . Investors may find the Company' s common stock less attractive because the Company will rely on these exemptions, which may result in a less active trading market for our common stock and its price may be more volatile. There can be no assurance that our common stock will be able to continue to comply with the continued listing standards of the NYSE. The shares of our common stock and warrants are listed on the NYSE. If the NYSE delists the common stock from trading on its exchange for failure to meet the listing standards, we and our stockholders could face significant material adverse consequences including: • a limited availability of market quotations for our securities • a determination that our common stock is a " penny stock, " which will require brokers trading in our common stock to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for our common stock; • a limited amount of analyst coverage; and • a decreased ability to issue additional securities or obtain additional financing in the future. We expect to continue incurring significant increased expenses and administrative burdens as a public company, which could negatively impact our business, financial condition and results of operations. We expect to continue incurring increased legal, accounting, administrative and other costs and expenses as a public company. We expect such costs and increases to be increased further after we are no longer an emerging growth company. The Sarbanes- Oxley Act, including the requirements of Section 404, as well as rules and regulations subsequently implemented by the SEC, the Dodd- Frank Wall Street Reform and Consumer Protection Act of 2010 and the rules and regulations promulgated and to be promulgated thereunder, the Public Company Accounting Oversight Board and the securities exchanges, impose additional reporting and other obligations on public companies. Compliance with public company requirements will increase costs and make certain activities more time- consuming. A number of those requirements require us to carry out activities we have not done previously. In addition, expenses associated with SEC reporting requirements are being incurred. Furthermore, if any issues in complying with those requirements are identified (for example, if the auditors identify a significant deficiency or material weaknesses in the internal control over financial reporting), we could incur additional costs to rectify those issues, and the existence of those issues could adversely affect our reputation or investor perceptions. In addition, we maintain director and officer liability insurance, which has substantial premiums. Advocacy efforts by stockholders and third parties may also prompt additional changes in governance and reporting requirements, which could further increase costs. If, securities or industry analysts cease publishing research or reports about the Company, its business, or its market, or if they change their recommendations regarding the Company' s securities adversely, the price and trading volume of the Company' s securities could decline. Research and reports that industry or securities analysts publish about the Company, its business, market or competitors may influence the public market for our securities. If securities or industry analysts cease coverage of the Company, the price and trading volume of our publicly traded securities would likely be negatively impacted. If any of the analysts who may cover the Company adversely change their recommendation regarding our securities, or provide more favorable relative recommendations about our competitors, the price of the our publicly traded securities would likely decline. If any analyst who may cover the Company were to cease coverage of the Company or fail to regularly publish reports on us, the Company could lose visibility in the financial markets, which in turn could cause the price or trading volume of our publicly traded securities to decline. Because we have no current plans to pay cash dividends on the Company' s common stock for the foreseeable future, you may not receive any return on investment unless you sell the Company' s common stock for a price greater than that which you paid for it. The Company may retain future earnings, if any, for future operations, expansion and debt repayment and has no current plans to pay any cash dividends for the foreseeable future. Any decision to declare and pay dividends will be made at the discretion of the Company' s Board and will depend on, among other things, the Company' s results of operations, financial condition, cash requirements, contractual restrictions and other factors that the Company' s Board may deem relevant. In addition, the Company' s ability to pay dividends may be limited by covenants of any existing and future outstanding indebtedness it or its subsidiaries incur. As a result, you may not receive any return on an investment in the Company' s common stock unless you sell your shares of common stock for a price greater than that which you paid for it. The Company may issue additional shares of common stock or other equity securities without your approval, which would dilute your ownership interests and may depress the market price of the Company' s common stock. As of ~~June 30~~ **December 31** , ~~2022~~ **2023** , the Company had warrants outstanding to purchase an aggregate **5** ~~of 14~~ , ~~067~~ **166** , **666** ~~051 shares~~ of ~~common stock~~ **private warrants** . ~~As~~ **In addition, as** of December 31, ~~2022~~ **2023** ~~, following the redemption in full of our public warrants, only 5, 166, 666 of private warrants remain outstanding. In addition, as of December 31, 2022~~ , the Company was able to issue an aggregate of up to 23, 768, 666 shares of common stock pursuant to our 2022 Equity Incentive Plan and 8, 000, 000 shares of common stock pursuant to our 2022 Employment Inducement Plan ~~(the " 2022 Inducement Plan ")~~ , which amounts **are inclusive of previously granted awards and which** may be subject to increase from time to time. The Company may also issue additional shares of common stock or other equity securities of equal or senior rank in the future in connection with, among other things, future acquisitions or repayment of outstanding indebtedness, without stockholder approval, in a number of circumstances. The issuance of additional shares or other equity securities of equal or senior rank would have the following effects: • existing stockholders' proportionate ownership interest in the Company will decrease; • the amount of cash available per share, including for payment of dividends in the future, may decrease; • the relative voting strength of each previously outstanding share of common stock may be diminished; and • the market price of the Company' s common stock may decline. Our stock price may be volatile or may decline regardless of our operating performance. You may lose some or all of your investment. The trading price of our common stock is likely to be volatile. The stock market recently has experienced extreme volatility. This volatility often has been unrelated or disproportionate to the operating performance of particular companies. You may not be able to resell your shares at an attractive price due to a number of factors such as the following: • our operating and financial performance and prospects; • our quarterly or annual earnings or those of other companies in our industry compared to market expectations; • conditions that impact demand for our services; • future announcements concerning our business, our customers' businesses, or our competitors' businesses; • the public' s reaction to our press releases, other public announcements, and filings with the SEC; • the market' s reaction to our reduced disclosure and other requirements as a result of being an " emerging growth company " under the JOBS Act or ~~a~~ **relying on** " smaller reporting company " **exemptions** ; • the size of our public float; • coverage by or changes in financial estimates by securities analysts or failure to meet their expectations; • market and industry perception of our success, or lack thereof, in pursuing our growth strategy; • strategic actions by us or our competitors, such as acquisitions or restructurings; • changes in laws or regulations which adversely affect the energy storage industry generally or Energy Vault specifically; • changes in accounting standards, policies, guidance, interpretations, or principles; • impacts from bank failures, reducing the financing options for the Company and its customers and suppliers; • changes in senior management or key personnel; • issuances, exchanges or sales, or expected issuances, exchanges, or sales of our capital stock; • changes in our dividend policy; • sales of shares of our common stock by significant shareholders; • adverse resolution of new or pending litigation against us; and • changes in general market, economic, and political conditions in the United States and global economies or financial markets, including those resulting from inflation including the effects of upward changes to the interest rate curves, natural disasters, terrorist attacks, acts of war, and responses to such events. These broad market and industry factors may materially reduce the market price of our securities, regardless of our operating performance. In addition, price volatility may be greater if the public float and trading volume of the common stock is low. As a result, you may suffer a loss on your investment. If we fail to maintain proper and effective internal control over financial reporting as a public company, our ability to produce accurate and timely financial statements could be impaired, investors may lose confidence in our financial reporting and the trading price of our common stock may decline. Pursuant to Section 404 of the Sarbanes- Oxley Act, the report by management on internal control over financial reporting is on our financial reporting and internal controls. The rules governing the standards that must be met for management to assess internal control over financial reporting are complex and require significant documentation, testing and possible remediation. To comply with the Sarbanes- Oxley Act, the requirements of being a reporting company under the Exchange Act and any complex accounting rules in the future, we may need to upgrade our information technology systems; implement additional financial and management controls, reporting systems and procedures; and hire additional accounting and finance staff. If we are unable to hire the additional accounting and finance staff necessary to comply with these requirements, we may need to retain additional outside consultants. If we, or our independent registered public accounting firm are unable to conclude that our internal control over financial reporting is effective, investors may lose confidence in our financial reporting, which could negatively impact the market price of our common stock. Activist stockholders may attempt to effect changes to our company, which could adversely affect our corporate governance, results of operations, and financial condition. Campaigns by stockholders to effect changes at publicly traded companies are sometimes led by investors through various corporate actions, including Board nominations and proxy contests. We may become subject to one or more campaigns by stockholders who desire to increase stockholder value in the short term. If we become engaged in a proxy contest with an activist stockholder in the future, our business and operations could be adversely affected as responding to such contests or other activist stockholder actions would be costly and time- consuming, and we would expect that such actions would disrupt our operations and divert the attention of management and our employees from executing our strategic plans and product launch. In addition, if individuals are elected to our Board with a specific agenda or without relevant experience or expertise, it may adversely affect the ability of the Board to function effectively, as well as our ability to effectively and timely implement our strategic plans, which are focused on building shareholder value. Any perceived uncertainties as to our future direction as a result of stockholder activism or changes to the composition of our Board may lead to the perception of a change in the direction of our business and instability or lack of continuity with respect to our products which may cause concerns for our customers or be exploited by our competitors. As a result, we could experience significant volatility and a decline of our stock price, the loss of potential business opportunities and difficulties in attracting and retaining qualified personnel and customers. Anti- takeover provisions in our certificate of incorporation, our bylaws and under Delaware law could make an acquisition of the Company, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove the Company' s current management. Our certificate of incorporation and our bylaws contain provisions that may delay or prevent an acquisition of the Company or a change in its management. These provisions may make it more difficult for stockholders to replace or remove members of its Board. Because the Board is responsible for appointing the members of the management team, these provisions could in turn frustrate or prevent any attempt by its stockholders to replace or remove its current management. In addition, these provisions could limit the price that investors might be willing to pay in the future for shares of Company common stock. Among other things, these provisions include: • the limitation of the liability of, and the indemnification of, its directors and officers; • a prohibition on actions by its stockholders except at an annual or special meeting of stockholders; • a prohibition on actions by its stockholders by written consent; and • the ability of the Board to issue preferred stock without stockholder approval, which could be used to institute a " poison pill " that would work to dilute the stock ownership of a potential hostile acquirer, effectively preventing acquisitions that have not been approved by the Board. Moreover, because the Company is incorporated in Delaware, it is governed by the provisions of Section 203 of the DGCL, which prohibits a person who owns 15 % or more of its outstanding voting stock from merging or combining with the Company for a period of three years after the date of the transaction in which the person acquired 15 % or more of the Company' s outstanding voting stock, unless the merger or combination is approved in a prescribed manner. This could discourage, delay or prevent a third party from acquiring or merging with the Company, whether or not it is desired by, or beneficial to, its stockholders. This could also have the effect of discouraging others from making tender offers for the Company' s common stock, including transactions that may be in its stockholders' best interests. Finally, these provisions establish advance notice requirements for nominations for election to the Board or for proposing matters that can be acted upon at stockholder meetings. These provisions would apply even if the offer may be considered beneficial by some stockholders.